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POLITICAL ECONOMY"

THE
TRUST PROBLEM

BY

JEREMIAH WHIPPLE JENKS, PH.D.

Professor of Political Science, Cornell University, Expert Agent United States Industrial Commission, Consulting Expert United States Department of Labor

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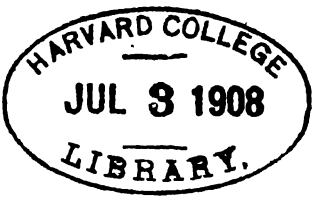

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The Trust Problem

The Trust Problem

INTRODUCTION

The information here presented has been gathered during the last twelve years, chiefly from personal investigation of large corporations through contact with their officers and workmen, their opponents, dealers in their goods, and also from such printed statistical data as seemed, on the whole, to be trustworthy. The chief opportunity has been in the investigation carried on by the United States Industrial Commission during the past year, though it should be understood that the Commission is in no way responsible for opinions here expressed. It has been intended to present mainly facts, and the judgments of those who, from their intimate connection with the corporations under discussion, either as members, rivals, or otherwise,

are thoroughly conversant with the facts regarding them. Besides the information so often courteously given by business men, Professors Hull and Powers of Cornell University, and the author's wife have kindly read the text and offered many most valuable suggestions.

The book is intended to be a brief compendium of industrial conditions, so far as they affect industrial combinations particularly or are affected by them, together with some opinions regarding the influences which have brought about present conditions, and the probable trend of future development. Some judgments regarding possible remedies for evils which have arisen in connection with these combinations are offered in conclusion. This study is not intended primarily for the student of economic theory. As a brief impartial statement of facts and principles, it is hoped that it will prove useful to the many busy men who have not the leisure needed to gather the material, but who, wishing to do their duty as citizens intelligently, will welcome a brief compendium which may to a certain degree serve them as a basis for judgment. It is hoped to make in the not distant future a more com-

plete study, which shall embody the results of European experience and which shall deal more fully with the whole problem of monopoly.

Considering the nature and purpose of this book, it has not been thought best to cite authorities for many of the statements made. Whenever they are taken from the testimony before the United States Industrial Commission, Dr. Durand's admirable index to that report will be available to all who care to verify the citations. In many cases, however, information given has been confidential in its nature, though on that account no less trustworthy. Such information has dealt at times with practices that in some way have come under public condemnation, such as promoter's rewards, freight discriminations, commissions to bank officers, and stock speculations. In other instances it has concerned the business of special combinations, and has formed the basis for judgments when the facts themselves were matters of only private concern.

The appendix contains some documents which may prove helpful in enabling readers to make more definite and specific their ideas regarding legislation that may possibly be

needed. The admirable summary of conclusions made by Judge Howe, the permanent Chairman of the Chicago Conference on Trusts, regarding certain suggested methods for the solution of the trust problem, is a noteworthy document as presenting what were in effect the opinions which could be agreed upon by substantially all the membership of that great Conference, representing so many conflicting views and interests. The Report of the United States Industrial Commission is a most carefully considered expression of opinion and recommendations by a non-partisan body of men, made after an investigation extending over a year's time. Though it does not claim to be final, nevertheless it was the result of most careful study and deliberation, and is entitled to the prominent position which has been given it by thinking men of all classes. The Proposed New York Companies' Act: 1900, drafted to carry out the suggestions made in Governor Roosevelt's message regarding Trust legislation, is the one formulation into a definite bill of the opinions of many persons who have thought it possible to separate sharply between the good and evil arising from the modern organizations of

capital, and who are ready to encourage the good while checking the tendencies toward evil, chiefly through compelling the corporations to carry on their operations much more than at present under the public eye. While in its preparation the author was assisted by several lawyers and business men, he took alone the responsibility of determining just what the bill should contain, and has, therefore, in condensing part of it and in determining what portions of it should be printed in full, felt at liberty to make some slight modifications in the bill as reported by the Judiciary Committee of the New York Senate. The summary of the plans of Mr. Coler and Mr. Bryan are given like the others in their own words without the arguments which accompanied them. The insistence of so many prominent investigators of the subject upon publicity as a remedy for the evils of industrial combination makes it the more to be regretted that there is only one put into the form of a bill. Were the others in like form, the points of likeness and difference could be more readily seen, and the best suggestions from each more easily chosen.

The purpose of the book forbids giving

much space to exact definitions and classification, but under the word "Trust," as expressed in the title, are included especially those organizations of capital which have been called, whether wisely or not, "Capitalistic Monopolies." Neither railroads nor telegraphs nor other public service corporations are especially considered; but, in general, "Trusts" are taken to mean manufacturing corporations with so great capital and power that they are at least thought by the public to have become a menace to their welfare, and to have, temporarily at least, considerable monopolistic power.

An effort has been made to explain these Trusts, and not to rest content with calling them the product of evolution, and assuming that, therefore, they are both inevitable and in the long run helpful rather than harmful. In a letter written but a few days before his death, the late Gen. Francis A. Walker, commenting upon this fatalistic attitude of some of his friends who were satisfied to call Trusts the product of evolution, remarked that he supposed the modern train robber was merely a normal development of the old-fashioned, commonplace highwayman, and continued: "Some evolution is worthy of only

condemnation. Some evolutionists ought to be hanged." With that view of economic evolution, as something requiring further explanation before being either approved or condemned, the book has been written.

The first two or three chapters, which discuss the modern business conditions leading to the formation of combinations, necessarily show their favorable side and the evils of the competitive system most strongly; later chapters, depicting their methods of work and their effects, show most clearly the evil in them.

It is hoped that the prejudices which are common to all have not prevented a reasonable degree of fairness in seeing and depicting both sides of this question, the good as well as the evil. While it is probable that the book has been written chiefly from the view point of the economist, it has been the intention not to ignore that of the publicist and of the citizen, who think of the practical as well as of the desirable in legislation, and who keep in mind the social and moral as well as the business welfare of the people.

CHAPTER I

COMPETITION: ITS NATURE

It is impossible to understand why there has been of late so strong a tendency toward the formation of industrial combinations, unless one first sees clearly the economic conditions out of which they have arisen. A brief study of the competitive system is therefore placed in the foreground.

It has been a common assumption among economic writers that competition is free, and that there is no element of combination among dealers or manufacturers. Most writers, of course, have been well aware of the fact that in actual business dealings this assumption is not true, but it has seemed wise to make it and to take it as a basis for argument in their deductive reasoning. Too many of them, unfortunately, in their conclusions have forgotten that it was mere assumption, made for logical reasons. The most vigorous opponents of industrial combina-

tion have, in like manner, tacitly at least, often made the same assumption; but it is so far from the truth in the actual business life of to-day that its adoption is certain to lead to misunderstanding regarding the nature of industrial combination.

The "friction" of competition is most readily noticed in the retail trade. Careless customers, ignorant of prices, call for goods which please them, and often purchase without striving to get the lowest price. Others, from habit or feelings of friendship, deal regularly with one merchant without comparison of his prices with those of his rivals. The convenient location of his store, or his pertinacity in soliciting custom, often enables a dealer to sell for more than the lowest market price, so that competition, from the point of view of price, is far from being free, or at least from being efficient.

A more or less formal understanding among dealers also checks the freedom of competition, and, in fact, introduces an element of combination quite similar in kind, though less in importance, than that found among large manufacturers. In many small cities there exist butchers' associations, grocers' associations,

associations of hardware dealers, of druggists, etc. Usually without formal contract these organizations substantially maintain a general level of prices throughout the city, besides furnishing to all of the different members the opportunity of reading trade papers, of learning the condition of the wholesale markets, and calling to their attention other matters of common interest. In such cities and villages a trader from the outside, particularly if he attempts to peddle his goods from house to house, is sure to be met with united action of all the dealers. Industrial combination has begun.

Even without these associations, grocery stores, dry-goods houses, butcher shops, and other retail mercantile establishments in the same neighborhood usually have the same prices for similar goods. Occasionally one will cut the price of some article which he employs as a leader to attract customers to his store, and this will be counteracted by a similar cut on that or other single articles by his competitors. The main line of prices, however, under usual conditions, remains substantially the same without vigorous competition. There is a tacit friendly understanding that living rates shall be

maintained, and these rates will enable the most skilful to make good profits.

At times, indeed, in order to avoid the name of monopolist, a large dealer in a small village may even encourage nominal competition. It is not uncommon for a large general store to furnish goods at considerably less than the usual retail price to some small dealer on the outskirts of the town, who, while asking the same price as the large dealer, can still reserve profit enough to keep himself in business, and yet to appear in apparent competition with a rival. In one case which was noticed in a Western State, a wealthy man who had established large stores in several villages for the supply of their inhabitants as well as of mining and lumbering camps in the vicinity, found it advisable to take active measures to bring into each of the villages one, and in some cases more than one, small dealer, whom he supplied with goods at wholesale rates, in order that apparent competition might be maintained and real competitors be discouraged from beginning business.

Of course it is evident that in retail trade, as in the case of large manufacturing establishments, if one merchant goes too far in the way

of securing high profits by what are considered unfair means, or of extending his trade by lowering prices, the tacit understanding will no longer hold but will develop into vigorous hostility, shown by actual cutting of prices to rates ruinous for the less skilful.

These understandings are not so common among wholesale traders or manufacturers; neither is there so great a probability of widely varying prices for certain classes of goods being secured by different dealers in one community. The margin of profit is less in the wholesale trade; purchasers and salesmen both are much better informed regarding the state of the market; each separate sale being, relatively speaking, large, is more important. For these reasons and others, the competition is much more nearly free, but the element of combination suggested still exists.

Among manufacturers, the nature of the industry itself is of much importance in determining the character of the competition and the trend toward combination. If the goods manufactured are of a kind whose quality is uniform and may be easily tested, competition becomes almost solely a matter of price. Especially is

this true if the article is one which is sold in large quantities. Salt in many States has its quality tested by a government inspector, and is always sold under the grades thus fixed. The quality of sugar is easily determined by the polariscope test, and all large buyers have the test made. Spirits, in like manner, are sold on the basis of proof spirits or of pure spirits, as the case may be, and the test of any special stock is easily made. Similar statements may be made regarding refined petroleum. Among such goods, if competition exists, it must be a competition in price.

On the other hand, if the quality of goods cannot be easily tested, and especially if the goods are sold in small quantities, which can readily be put into packages for the use of retail customers, brands and trade-marks are usually adopted by manufacturers. In such cases, competition does not become necessarily one which forces prices down, but may readily be simply a contest in advertising. Most buyers do not test the quality of Pears' soap to see whether it is better than that of a rival brand. Its manufacturers are not likely to cut the price in order to increase its sale. It pays better to in-

crease the expense of advertising. The Royal Baking Powder may be perfectly pure, but the housewife who insists upon using it has probably never tested it in comparison with other brands. She has been attracted by the advertisement, has found the baking powder satisfactory, and insists upon buying it. It is a noteworthy fact that the largest of the earlier industrial combinations in the United States were those among the manufacturers of petroleum, salt, sugar, and spirits, goods of which the quality is uniform, and is tested by large buyers. Combinations among manufacturers of articles sold chiefly under trade-marks known by retail buyers are of comparatively late development. In the first case, a combination would be made to prevent a cut in prices; in the second, to save the costs of advertising.

If the amount of capital which must of necessity be invested in a fixed plant for the successful production of any class of goods is large, the nature of the competition differs materially from that of an industry in which a small amount of fixed capital is sufficient to enable one to work to good advantage. In the first instance the number of competitors is likely to be much

smaller than in the latter. The loss arising from a temporary suspension of manufacture is very much larger, both absolutely and relatively, since it usually involves greater loss to machinery, more of a break in a complete organization of workingmen in different departments, which it may take much time to bring together again into harmonious working order, a break with a larger circle of customers who are more difficult to regain; and, in consequence, competition in these industries, if it becomes fierce, is likely to bring disaster to the industry as a whole.

From three to five millions of dollars are required to build and run satisfactorily a sugar refinery. In the whole United States, only some forty sugar refineries were in existence before the formation of the Sugar Trust in 1887. It was not easy for a sugar refiner who felt the pressure of competition to close his establishment for the time being and later to start up again. He might better for an interval carry on the business at a loss. Competition among the refiners finally became so fierce that some eighteen of them had gone into bankruptcy before combination into the Trust finally abated for the time the fury of the contest.

An industry which requires but small capital to carry it on, will encourage hundreds, or more likely thousands or tens of thousands, of individuals to engage in it. The great variety of circumstances surrounding them, and the great differences in individual skill of the numerous competitors make it likely that some few will be continually on the verge of bankruptcy, and that from time to time individuals will be falling over under the pressure of competition. The elimination of these least skilful or least fortunately situated competitors, whose manufacturing is carried on at the greatest cost, does not produce any wide-spread depression in business, but serves rather to elevate the general average of skill in the industry. While the individual unfortunates may perhaps be sympathized with in their misfortunes, their loss is, after all, a gain to industrial society, since thereby the plane of production is raised. It is the consideration mainly of industries of this type that has given rise to theories of normal price, a marginal price, etc., as a safe basis for economic reasoning, and many writers in speaking of competition think of this kind only. Attention will be called later to differences of

the two kinds of competition, or, rather, of competition among industries of these two kinds, in the effects on prices.

On the other hand, industries that must be conducted on a large scale with enormous capital naturally call into the business only a few highly skilled managers. The circumstances and skill of the different competitors may be so nearly equal that competition will eventuate, not in the elimination of some few while the majority are still making profits, but rather in a depression of the entire business, so that only the very few most skilful or best situated will be making any profit at all, while the others still struggling along may be losing money for a long period before they finally yield. Indeed, the result may well be that for a considerable length of time all will be running at a loss; and such competition among so many strong rivals often produces at the end shoddy goods, reckless financiering, and speculative methods in business which are a menace to business prosperity. Competition of this nature, resulting in a general depression of business, or in the bankruptcy of a large portion of those engaged in the industry, with the consequent losses to their creditors, is

not immediately at least an economic gain to society, although prices may be low, but is rather on the whole an industrial loss, although one must not forget that as yet it is in these struggles that captains of industry pass their cadetship. It is in this class of industries, in which the amount of fixed capital in the plants must of necessity be large, and the competition of necessity fierce, and generally turning upon price, that combination is not merely more likely to be found, but is probably more nearly justified, than in the case of those industries whose successful management requires investment of but a comparatively small capital.

CHAPTER II

THE WASTES OF COMPETITION

Contrary to the popular opinion, competitive prices are frequently, if not usually, high prices. In industries of the kind mentioned in the preceding chapter in which competition turns almost solely upon price, the competitive price will naturally be low; but in the other cases in which the cost of selling becomes an important factor in determining the price, competitive prices are certain to be high as compared with the cost of manufacture. So, too, if there is much loss from production on a small scale, prices will be high as compared with what they might be if carried on in great establishments, although this added cost may or may not be a matter of a competitive waste. One ought not to lose sight of the distinctions between production on a great scale and production under monopoly, and the wastes of competition as compared with those of production on a small scale. Both tend toward combination.

Of course it is not the intention to assert that competitive prices, even in these industries in which one may contrast competition and monopoly, are always as high as monopoly prices, although that might in many cases be true if one speaks of actual prices instead of using both expressions in a technical sense. It is probable that ladies' hats and other articles in the choice of which fashion, personal tastes, and the skill of salesmen enter largely as factors, sell for higher prices under a competitive régime than would be possible if a monopoly—even a legal monopoly—were given to one establishment. As will be noted later, however, such industries cannot readily be monopolized, unless one wishes to speak of personal skill or taste as a kind of monopoly. Before noting the special wastes of competition which often make competitive prices high, one should note that it is intended in this connection to compare the actual prices received in the market with the cost of manufacture, not with the cost of production and sale in the market.

Manufacturers frequently say that the chief difficulties to be overcome in business are those of securing a market rather than those of manu-

facturing. This ordinarily means that, in order to make sales in competition with their rivals, it is necessary to take much care and to go to great expense in order to bring their goods to the attention and the favor of their customers. If, through combination among different manufacturers, this competitive bidding of one against the other could be obviated, it is evident that a large part of this expense could be saved.

Wherever it is necessary for merchants to make selection of goods in order that they may suit the tastes and needs of their customers, it is desirable usually for them to see the goods before making purchases. Under those circumstances either the merchant himself must visit the manufacturer or jobber or else an agent of the manufacturer must visit the merchant. Of late years it has become customary for travelling salesmen with samples of goods to visit merchants, in order to afford them this opportunity of seeing goods before purchasing, and of selecting those which are likely to suit the tastes of their customers. If one manufacturer of muslins or hats sends a travelling salesman to visit the retail dealers throughout a certain section of the country, rival manufacturers must in

some similar way bring their goods to the personal attention of the merchants, or else sales will be lost. The result is that several salesmen from as many different houses travel over the same routes and show goods to the same merchants. If a combination among the manufacturers in the same line can be made, one salesman could show all of the goods of the combination to all of the different merchants substantially as well as the entire number could do before the combination was made. When the American Steel and Wire Company was formed, it was on this account found possible to dispense with the services of nearly two hundred salesmen. When one of the later whiskey combinations was formed, about three hundred travelling salesmen could be spared without the business being in any way neglected.

Moreover, when competing salesmen visit a merchant it is often true that the more plausible or skilful salesman succeeds in taking the order, although his goods may possibly be inferior to those of his rival. The best salesmen, therefore, are often thoroughly trained, experienced men who command high salaries. When, however, owing to the formation of a combina-

tion, the merchant has but one manufacturer from whom to buy, it is not necessary that he become a victim of eloquent persuasion. It is sufficient if he see the different lines of goods with prices attached, and take his choice. A much less skilful salesman, therefore, provided he be honest and diligent, can do the business thoroughly well. The manufacturer may now employ a salesman for a thousand dollars, whereas against competitors it might have been profitable to pay five thousand dollars for successful service. The stimulus which it is so necessary for travelling book agents or clerks in retail stores to furnish to their customers is much less needed in selling to a dealer. His purchase depends mainly upon the demands of his customers, and therefore often upon his own skill as a salesman.

Competition also increases the necessity of frequent visits. In some portions of the Northwest, within a few years, it was customary for the wholesale druggists to send salesmen through the country every six weeks or two months to show goods and take orders for specialties, samples of which it seemed necessary to exhibit. Orders for standard goods were regularly sent

to the manufacturers or wholesalers by mail. As competition sharpened, and the travelling salesmen of some firms began to make more frequent visits, once a month or once every three weeks, it became necessary for their competitors to follow, until finally, in certain localities, it had become customary for travelling salesmen to visit the retailers as often as every two weeks. The retailers themselves, having become accustomed to these frequent visits, grew gradually into the habit of reserving orders to give to the salesmen instead of sending them by mail, and the enormous expense of selling thus brought about increased largely the cost of the goods to the retailer and consumer, though it is probable that the vigorous struggle for competitive profit pushed new and at times useful goods on the market.

The amount of loss coming from this often misdirected energy can, of course, be merely a matter of conjecture in most cases. Mr. Edson Bradley, Vice-President of the Distilling Company of America, and President of the American Spirits Manufacturing Company, estimates, in his testimony before the United States Industrial Commission, that, in the sale of alcoholic

liquors in this country, somewhere between the distiller and the consumer at least $40,000,000 a year are lost. He thinks that this is lost primarily in the attempt to secure trade, and that the result is simply a higher price to the consumer. Part of this waste comes from the wages paid to travelling salesmen and from their travelling expenses; and from that source alone his combination saves $1,000,000 a year.

The cost of advertising in papers and magazines, by show windows, "landscape decorations," and other means, adds greatly to the cost of putting goods into the hands of the consumer. The price of a single full-page insertion in such a magazine as the "Century Magazine," "McClure's Magazine," "Harper's Magazine," the "Cosmopolitan," and others, is at least two to three hundred dollars; yet every one knows that it is scarcely possible to open any of the popular magazines in any civilized country without seeing on one of the best advertising pages some smiling face with the inquiry, "Have you used Pears' soap?" Other soap manufacturers fill other pages with advertisements no less attractive or expensive, and the amount thus spent in competitive ad-

vertising must clearly cost millions of dollars per year.

Some firms push the sales of their wares largely through the offering of prizes of various kinds. For $10 one may secure a box of soap, which at the retail price would cost $10, and in addition may receive a rocking-chair, a bedstead, a writing desk, a lamp, a baby carriage, or other article to suit the buyer's needs, of which the retail price would also be $10. It is true that instead of the prize one may take more soap, but the prize was, originally at least, the attractive feature. A short time ago a manufacturer of spices advertised that for $37.50 a customer might receive spices of which the retail price would be $37.50, and in addition a premium of a forty-dollar clock. For $25 might be secured twenty-five dollars' worth of spices, and a twenty-nine-dollar Waltham watch, with many other similar offers. In all these cases, not merely was the quality of the goods advertised of the best, but the premiums were also of standard makes, whose value could not be questioned.

It should not be forgotten that all this advertising does not increase proportionately the

amount of soap or spices consumed. If it did, the advertising could scarcely be considered an economic loss. The purpose of the advertising is not chiefly to persuade customers to buy more soap or spices, but to use Pears' instead of Colgate's, or Ivory soap instead of Babbitt's, or one favorite brand of spices instead of another. Such expense of advertising must, of course, add greatly to the cost of the goods to the consumer. It is probably not too much to say that in many lines it would be possible, if the competitive advertising were rendered unnecessary, to furnish as good quality of goods to the consumers, permit them to pick their brands, and charge them only one-half the prices paid at present, while still leaving to the manufacturer a profit no less great than that now received. The men now employed in the work of advertising might well put their efforts to better use in the service of the consumers. High as is the artistic quality of some of the advertising, its educative effect would doubtless be reached in other ways at less cost.

The anxiety to make sales in time of sharp competition leads also, in many cases, to extension of credits beyond what is wise, and the

manufacturer, fearing to lose a customer, will often fail to exercise due diligence in the collection of debts owed him. A large combination, having control of a large proportion of its class of goods in the market, can readily avoid these difficulties, and Trust managers testify that their losses from bad debts have been very greatly lessened through combination.

Whenever competitive business is carried on through many establishments, each working on a small scale, and particularly when the industry is one in which many qualities of goods of a somewhat similar nature are manufactured, the buyer is often put to considerable expense in going from one manufacturer to another in order to secure the variety of qualities which will satisfy his needs. A large establishment which carries substantially all the leading qualities in stock, and which can thus supply the demands of any customer without trouble to himself beyond the presentation of his order, will readily secure trade which would otherwise be lost. This ease in securing orders is often a great source of saving to a combination. The Distilling Company of America found it advisable to purchase several of the leading brands

of rye whiskeys in order that customers might supply themselves not only with alcohol, spirits, and standard grades of corn whiskeys, but also, without leaving the establishment, with a sufficient number of the finer brands of rye whiskeys, so that all their needs in these directions would be met.

A similar advantage comes from keeping a stock so large that the largest order can be filled at once. It has been estimated by some conversant with the sugar business that the American Sugar Refining Company, on account of its ability to supply any customer with all the sugar that he can require at any time, is able frequently to secure one-sixteenth of a cent more per pound than some of its competitors, they being compelled to go one-sixteenth below the regular market price in order to effect a sale.

These two advantages apply, of course, to department stores and to any large establishment, but they strengthen the tendency toward control of the market in many cases, even though monopoly has not been reached.

Large sums of money are frequently spent by competitors in the payment of cross freights which might readily be saved by combination.

When the Michigan Salt Association was formed some years ago for the special purpose of effecting sales through a single agency, it acted as the sales agent for salt wells on both the east and west sides of the State of Michigan. Orders for salt to supply Chicago and the West were filled regularly from the salt-manufacturing establishments on Lake Michigan, while those for Detroit, Toledo, Cleveland, and the East, as far as salt was shipped in that direction, were supplied from those on Lake Huron and the St. Clair River, a saving thus being made of the shipment of salt across the State of Michigan by rail or around the State by boat through the Straits of Mackinaw. This saving in freights was great enough to make a profit for those in the Association, when the sale of salt to be shipped the longer distances at the same prices would inevitably have resulted in a loss.

In like manner, the Standard Oil Company, with its large refineries at Bayonne, N. J., on the Atlantic seaboard, and others at Whiting, near Chicago, aside from any question of freight discrimination, is enabled to secure a great advantage over many of its rivals who have but a single refinery from which all orders must be

shipped both East and West. The Tin Plate and Steel Companies, when organized into large combinations, made similar saving in cross freights, Mr. Gates, of the American Steel and Wire Company, estimating their saving at more than $500,000 a year, while other manufacturers name also large savings. It will be noted that this advantage comes particularly to those manufacturers whose goods are bulky, so that the freight forms an essential part of the cost to the consumer. Manufacturers of ribbons, watches, or other expensive and highly finished goods, while able to obtain a slight advantage in this direction, would yet find freight but a small part of their expense.

For some years before the formation of the old Whiskey Trust, the capacity of the existing distilleries was far more than was necessary to supply the normal demand of the country at profitable prices. In consequence, agreements were made from time to time among nearly all the leading distillers to restrict the output. One year each distiller pledged himself to run his plant at only 40 per cent. of its full capacity. Another year the agreement limited the output to only 28 per cent. of the full capacity. After

the formation of the Trust, out of more than eighty distilleries which joined, all were closed with the exception of twelve of the largest, best located, and best equipped, which ran at their full capacity; and the output of these was equal during the first one or two years to the entire output of all of the distilleries which had been running before. Of course it is true that, owing to the pressure of competition, a good many of the distilleries had been shut down before the Trust was organized. It is nevertheless probable that no other source of saving was so great as that which came from running the best distilleries to their full capacity and all the time. Mr. Havemeyer, in connection with the Sugar Trust, calls attention emphatically to this waste of excessive competition. Before the organization of that Trust, about forty sugar refineries had been running, but none of them could work to their full capacity and all of the time, and, as has been said, as a result of the competition some eighteen went into bankruptcy. The Trust was formed, and shut down or even dismantled several of the refineries which it bought. It then ran the rest to their full capacity all of

the time, and in this way, Mr. Havemeyer thinks, the greatest saving of the Trust was made. At present, when five or six independent refineries are running in competition with the American Sugar Refining Company, it is thought by the combination that it derives a somewhat similar advantage. In most cases the rivals, owing to the fluctuations in prices, are not able to run to their full capacity, and in many cases run only part of the time. On the other hand, the Trust, supplying some 90 per cent. of the market, adopts a somewhat more thrifty policy. Substantially all of the refineries, with the exception of the largest and best equipped one in Brooklyn, are run to their full capacity all of the time. In this one refinery the sugar combination places its most skilful men, and through the operation of that one establishment fits its supply to the demands of the market. This is most carefully watched from day to day, and every possible method of avoiding waste and loss from the restriction of output, which at times becomes necessary, is employed. The loss from a partial output is thus confined to the one establishment which forms but a small proportion of the total capac-

ity of the organization, whereas in the case of its rivals the loss applies to the entire capital invested when only one refinery is under consideration. It has been estimated that this saving to the American Sugar Refining Company is as high at times as one-eighth cent per pound, a margin sufficient in itself to give a large profit. It is interesting to note that the new sugar combination just formed, in June, 1900, to compete with the American Sugar Refining Company, gives this saving as the chief reason for its formation. This waste of competition, then, which comes from the inability of adapting one's plants and output to the needs of the market without excessive loss, can be partly saved by combination of many manufacturing establishments in one industry under one management.

When one establishment, in order to supply the needs of its customers, manufactures several different grades or qualities of goods, it becomes necessary frequently to change the machinery, and even to stop it at times while changes are made from one class of work to another. For example, the President of the American Steel Hoop Company, Mr. Guthrie, says that he

manufactures from eighty-five to ninety different sizes and kinds of goods. If these goods were manufactured in one or two establishments, there would be frequent changing of the rolling machinery in order to fill any one large order which called for many different sizes. Under the present circumstances, a large order calling for different classes of goods may be distributed among the different mills, each one adapted for the manufacture of a particular class. In this way changes of the rolls are largely avoided, and the delays are obviated which would result in large waste of time and energy, provided the competitive system, or the system of small independent mills, were in vogue. Mr. Guthrie's opinion is that this saving alone amounts to from a dollar to a dollar and a half per ton in manufacture. The leather combinations find that they have avoided similar wastes by manufacturing in one establishment certain special grades of shoes to which special kinds of leather can be sent, instead of having each establishment separate the leather for itself and manufacture many different grades of shoes. This waste of competition—or if one prefers in this case to say of subdivision—

which can be avoided by combination, of course varies largely with the different kinds of manufacture, but in some the waste is doubtless very great. The saving in a large establishment does not of necessity imply monopoly.

The head of one of the largest stores in the country was not long since showing a friend through the establishment. To inquiries as to wages of different employees, the reply was: "This man receives $10,000 per year; that one receives a salary of $15,000 per year," and so on, as the heads of various important departments were pointed out. When the friend remarked that it must be difficult to pay dividends if such enormous salaries were paid to so many men, the manager replied: "There is nothing so cheap as brains; they must be had at any price." Every person who deals with large affairs in any profession or trade or walk in life recognizes the fact that nothing is so rare as excellence. Whether the work be manufacturing, or transportation, or merchandizing, or teaching, or law, the fact is the same. The first-class man is exceedingly rare, and is cheap at almost any price. The great merchant princes, like Stewart, or Field, or Wana-

maker ; the great manufacturers, like Carnegie, or Rockefeller, or Havemeyer, are possible under present circumstances because such talent for managing, whether for the public good or ill, is rare ; and when it is found, the opportunities for its employment readily come, as they do to the great lawyer or preacher. Without ignoring the fact that the competitive system plays a noble part often in selecting for industrial society the great leader, it is still true that one of the chief wastes of competition is found in the fact that the separate establishments are mostly in the hands of mediocre men, who, unable to effect the savings that come from the most skilful organization or from a judicious forecast of the market, lose money for their stockholders without any saving to consumers from low prices.

Great skill in management is by no means, as many seem to think, the mere taking advantage of an opportunity to cheat a customer or hoodwink a competitor; but it frequently, if not generally, results in an absolute saving of energy which comes from the more skilful organization of labor, and adaptation of ways and means to ends. The combination, bringing to-

gether numerous establishments of the same kind, is enabled to select the most skilful men to place in charge, and thus practically an entire industry can be managed with the same skill as a single establishment. While it is of course true that one man cannot give his personal attention to the details of a very large business, so that at times, doubtless, in the combination there is a certain waste that comes from lack of detailed inspection by the chief owner, it is nevertheless true that this waste is in most cases comparatively little. The man of really great executive ability knows so well how to organize his business that men of inferior capacity working under his system, even though only upon salaries, are enabled to do better and more careful work by far than the same men in an independent position, where they are unable to consult to advantage men more skilled than they. One chief gift of a great executive is the power to select and direct subordinates. The skill of Grant as a general was shown not more in the planning of battles than in the selection of his chief commanders, and in his power to discern wherein they could be trusted, so as thus to inspire each to his best efforts.

The same skill is shown by a great captain of industry.

This advantage of management by the best talent is a matter also of the proper distribution of talent. Some man in his independent establishment may have been peculiarly successful on account of his skill as a salesman; another, on account of his organizing ability; a third, on account of his special technical knowledge, and so on. If these various competing establishments are united into one, to each man can be given the department for which he is peculiarly adapted, and in that way the joint establishment gets the advantage of the peculiar skill of each.

Manufacturing establishments are sometimes embarrassed by the difficulty of securing a proper supply of raw material at the exact time when it is needed, and in proper quantities and qualities. On the other hand, miners or other producers of raw material are also frequently embarrassed in finding a sure market for their product. In consequence of these facts, many combinations like the Federal Steel Company (the organization of which with its peculiarities is explained in detail in a later chapter) have

been made, not of those who are competitors in the same line of manufacture, but rather between the producers of raw material and the manufacturers of the finished product, in order that these requirements of demand and supply may be readily met, and the course of production from the raw material through to the highest finished product may be carried on without delay or unnecessary friction.

A very large establishment often finds it profitable to manufacture some by-products from its waste material, which, owing to the extra capital needed, or to an insufficient quantity of waste material, its smaller rival must either lose entirely or part with at a disadvantage. The largest oil refineries at times make as much profit from by-products as from their illuminating oil.

It would seem that if there is any real economic function of combination of capital, whether it has attained monopolistic power or not, it is this: saving the various wastes of competition, in great part by providing for the direction of industrial energy to the best advantage. Under wastes of competition may be understood also those of subdivision in production or production on a small scale; under

combination also mere aggregation of capital. But these separate meanings should be distinguished, as is done later. In this way only can it be made possible for the general public to secure articles of consumption at an absolutely low price on the basis of a low cost of manufacture. How far combinations thus far have permitted the public to gain these advantages, and how far they have themselves selfishly taken advantage of their superior productive power to the detriment of the public, will be considered elsewhere.

CHAPTER III

FAVORS TO INDUSTRIAL COMBINATIONS

Many writers and thinkers on the subject of industrial combinations are of the opinion that they are usually brought into existence by special favors, and that, at any rate, whatever monopolistic power they possess is secured in this way. It is even the contention of some that unless the industries themselves are natural monopolies, such as railways and the telegraphs, or unless they are granted some special legal privileges, such as patents or copyrights, it is impossible for them to secure monopolistic power without some special favors shown them.

The protective tariff is probably most frequently cited as a special favor to an industry that brings into existence monopolies. The dictum of Mr. Havemeyer, the President of the American Sugar Refining Company, in his testimony before the United States Industrial Commission, that "the mother of all Trusts is the customs tariff law," has found ready acceptance by large

numbers of thoughtful people. Mr. Havemeyer's contention is that a high tariff, by making the protected industry very profitable, will tempt much capital into that special field. In many cases, the establishments, on account of the high profits, will be placed carelessly in unfavorable locations. In other instances, for the same reason, men who are not skilled in the industry will be ready to engage in it. The promise of high profits having thus tempted many rivals into the field, the pressure from this home competition becomes severe, and investors feel themselves cheated of their anticipated profits. With the profits thus in sight, or even perhaps with the memory of large profits in the immediate past to stimulate them, they more readily combine, not primarily for the sake of reducing expenses, but rather for the purpose of reaping from consumers a large reward through high prices. It is beyond question true that several of our largest combinations have been formed in industries protected to a considerable extent against the pressure of foreign competition by the high protective tariff. Indeed, Mr. Havemeyer himself acknowledged that, had the sugar industry at the time of the formation of

the Trust not been so protected that there was promise of a high profit without foreign competition, he would not have risked his property in the combination, which of necessity included also many of those establishments least favorably situated for cheap production.

The situation is, however, not so exceptional as is often thought. Even in unprotected industries in which the United States has an advantage, the same principle of high profits in the earlier days, lower profits from the pressure of competition, and the consequent temptation to combination exists. If one considers what the effect would probably be of the removal of the protective tariff in an industry in which a combination exists, one can readily see that, while the public might be benefited, the result would hardly be the prevention of monopoly. If the combination, as is ordinarily assumed, were stronger than the few independent competitors still in existence in the country, the first effect of the removal of the tariff would be the ruin of the independent producers. Provided the industry were dependent entirely upon the tariff for its existence, the removal of the tariff would of course kill the Trust, but would

at the same time kill the entire industry. The question of the wisdom of supporting an industry by the tariff is not in question. It might be wise to kill a certain industry, but it should be borne in mind that those who advocate the removal of the tariff for the sake of destroying the Trusts do not ordinarily contemplate such an outcome. The removal of the tariff, whether the industry were dependent upon it or not, would certainly destroy the rivals of the Trust before the Trust itself would go out of existence. In either case, however, the consumers would, beyond question, for the time being, enjoy lower prices.

It is also true that the removal of the tariff in many instances by strengthening the competition from foreigners would simply bring about an international combination. At present there exists an international thread combination. Chairman Gates of the American Steel and Wire Company testified before the Industrial Commission that, during the summer of 1899, while abroad, he had several meetings with German wire manufacturers, who are also combined, for the purpose of seeing if it were not possible and advisable to form an interna-

tional combination for the manufacture of wire, since the Germans at present are the most serious competitors of the Americans. The plan suggested was for the two countries to divide the world's markets in accordance with a fixed percentage, and to agree upon an increase in price. The difference of opinion as to the percentage of the markets which should be allowed to the Americans—Mr. Gates demanding fifty, while the Germans were willing to grant at the outside not more than forty-five—and further differences of opinion regarding the increase in price—he being content with an increase of $10 per ton, the Germans wishing to secure one of $30—finally made him distrustful, and resulted in the breaking off of the negotiations. The mere fact, however, that two powerful, even virtually monopolistic, combinations in two leading countries could in this way have progressed so far in negotiation, makes it perfectly evident that the pressure which might be brought to bear by the removal of tariff obstructions, or, in other circumstances, by the imposition of tariff burdens, might readily result in an international combination of some form.

Probably even without such pressure interna-

tional combinations are in prospect for the near future. Nearly all of the larger manufacturers have now their agents abroad; sales, especially in iron and its products, are made continually in all foreign countries; and it would not be at all difficult in most cases to enter upon negotiations for combination. It is true that it is not many years since the great copper syndicate of Paris, which seemed for the time to control substantially the entire output of the world, made a most humiliating failure; but such experiences ordinarily serve but to point out weaknesses in a certain plan and to suggest better methods for the future.

Freight discriminations in behalf of favored shippers are very frequently cited as a chief cause for the formation and rapid growth of industrial combinations. There can be no doubt that such discriminations have frequently been made in favor of large shippers, whether manufacturers, buyers of grain, shippers of dressed meats, or others. In fact, in many lines of business, it has probably been true that no person who did not receive some rebate from the printed tariff rates, or other favor from the railroads, could remain in business, as such draw-

backs or other favors were so frequently given. There is reason to believe also that this evil still exists to a very great degree. Within the last year prominent shippers have expressed the opinion, based apparently on their own experience, that rebates were regularly paid at the present time by the railways to a few of the largest shippers, and that in this way the smaller dealers were compelled to sell their goods directly to the larger. Others have not hesitated to say in private that their shipments were regularly made by special contract, and that practically no attention was paid to schedule rates. Shippers, railway officials, special students who are particularly well acquainted with the problems of interstate commerce, all assert that such discriminations exist in favor of the larger shippers, and that, as yet, no successful remedy has been found for the evil.

The enormous and dangerous power of the railways, by giving special rates in favor of shipments to one town, in building up that town at the expense of its neighboring rivals, or in pouring wealth into the lap of one great shipper or manufacturer, while bringing by the same process ruin to his competitors, can hardly

be overestimated. The fact that such discrimination has been considered by our highest courts and ablest writers contrary to public policy as well as to good morals does not lessen materially the difficulty of the problem.

There can be no question that the largest shippers are able in many cases not merely to lessen labor for the railways, but also to render more secure their profits, their steadiness of shipment, and certainty of pay. Moreover, they can in many cases render direct service to the railways in the way of adapting their shipments more or less to the conditions of traffic so as to accommodate the railways, and in cases of agreements more or less formal, among different roads, they can act as eveners of traffic. Many of these services, some of which are perfectly legal and proper in their nature, would seem to justify some sort of payment, and it is on the basis of such benefit received that the railroads attempt to justify their discriminations from an ethical as well as from a business standpoint. Such justification might, too, in many cases be complete, were the railroad dividends alone under consideration; but if the public weal is threatened by monopoly thus

created, and if individual ability and effort, however well directed, are thus secretly rendered useless, there can hardly be justification from the social point of view. In interstate matters, of course, since the passage of the Interstate Commerce Law in 1887, such discriminating practices are clearly illegal, and they have generally been considered as contrary to public policy; but that they are granted, and that business is done largely on that basis, is scarcely a matter of question. That such discriminations, too, usually favor the large shipper, giving him at times monopolistic power, and increasing his monopolistic power, if such already exists, is beyond doubt.

Inasmuch as such discriminations are contrary to law, it has been asserted by several of the larger combinations, such as the Standard Oil Company and the American Sugar Refining Company, that it is even better policy for them, to say nothing of the moral aspect of the question, to live up to the law strictly, and see to it that their rivals are forced to do the same, than to run any risk of being caught in illegal practices. This is especially true where the shipments are very numerous and are made from widely separated points, so that evasions

of the law would almost certainly be detected. One scarcely needs to add that their rivals believe that their practice hardly agrees with their avowed policy.

Aside, however, from violations of the Interstate Commerce Law, the large combinations at times get freight advantages which add greatly to their power. It seems to be established that the Standard Oil Company receives decided advantages from the location of its refineries at Bayonne, New Jersey, when the nature of the freight rates on oil shipped into that territory is taken into consideration. Shippers of goods from Western Pennsylvania or Ohio to points in the New England States are usually given Boston rates on most articles; but on petroleum the rate is arbitrary, a local rate usually being added to the through Boston rate. On that account the rivals of the Standard Oil Company whose refineries are located in Western Pennsylvania or Ohio find it impossible to compete at many points which they could easily supply at profitable prices, provided that Boston freight rates were charged. The Standard Oil Company, by bringing its oil to East Boston in tank steamers from its refineries on the

seacoast, can distribute throughout New England at only the local rates, thus securing so decided an advantage that it is able to control the oil market throughout that territory. In like manner, by having very large refineries located at Whiting, near Chicago, it is able to supply the South and West at lower rates than its rivals, who ship from Western Pennsylvania or Ohio, the rates from the immediate neighborhood of Whiting being apparently much lower than those from localities where rival refineries are located. It may pay exactly the same rates as its competitors pay when shipments are made over the same routes; but, owing to the fact that its refineries are more advantageously located, it not only secures a great advantage in the saving of cross freights, but it can also save through favors in rate making. It is not thought by many that there is any direct discrimination when oil is shipped over the same route, but the railroads seem to have arranged their rates in such a way that they work decidedly to the advantage of a company situated as is the Standard Oil Company. The arrangements made, too, are so different from those that obtain in other lines of goods that they give color to the

belief held by so many that the railroads and the Standard Oil Company are working, in certain cases, practically in partnership. It is probable that a careful study of the freight rates on other classes of goods controlled by other very large shippers would reveal similar arrangements. Especially may one fairly make this assumption when specific cases of favoritism that are illegal in form as well as in spirit are openly acknowledged both by the railroads and by shippers.

The distinction should not be overlooked between the proper and legitimate advantages derived by large shippers and combinations through better facilities for handling, adaptation of trade to circumstances and markets, savings in cross freights, etc., and those arbitrary discriminations, whether technically illegal or not, by which a railroad may at will build up or ruin a special locality or any single shipper without regard to his care or skill.

CHAPTER IV

COMBINATION AND MONOPOLY

There is much difference of opinion as to whether or not the large combinations of capital of the present day are to be considered monopolies; and since the decisions of the courts regarding combinations are based largely on their views regarding monopoly, the question has a decidedly practical aspect. When a monopoly is found to exist, there seems to be also a difference of opinion as to the force by which the monopoly is retained. Of course circumstances are likely to differ in the different cases. Some of the larger combinations have succeeded in obtaining control of practically all of the valuable patents in certain lines of manufacturing, thus giving them a legal monopoly which would be protected by the courts. Practically all of the barb wire made in the country at the present time, as well as the wire fencing, is in the hands of the American Steel and Wire Company, because that company owns all of the

valuable patents, with one or two exceptions, in those lines of manufacturing.

No one questions the fact that the so-called "industries of increasing returns" or "natural monopolies," such as the railways, the telegraphs, the telephones, the street railways, gas and electric-lighting plants, etc., do, as a matter of fact, in most cases possess a real monopoly. It is, of course, true that this monopoly is probably in no instance entirely without some competing force in operation against it. A gas company may supply all of the gas used in a city, but some of the more thrifty individuals will use wax candles or kerosene lamps instead —a kind of competition which may often materially affect the dividends of the gas companies. There may be but one street railway company in a city, but if its prices are high, or if they are even at the ordinary rate, there is always more or less competition from carriages, omnibuses, and bicycles. In all of these instances, however, the fact that there is more or less business carried on by others does not prevent the existence of what is properly called a monopoly.

Most of the instances which have been cited

of the savings of the wastes of competition which come from the combination of different establishments, have dealt with organizations that are neither "legal monopolies" nor "natural monopolies," as those expressions are ordinarily understood, but are simply combinations with a very large capital; although in some cases, like the Standard Oil Company, which controls pipe lines, there may be united with them some natural monopoly, or they may receive some special favors, such as those just mentioned of freight discrimination or of favorable tariffs, which may aid them in maintaining their position. The advantages of freight discriminations and tariffs are to be found also in the case of nearly all large manufacturers or shippers, even though they have not been able to secure what may be considered a monopolistic control of the market.

It is even sometimes asserted that the possession of very large capital is in itself never sufficient to secure a monopoly in any industry, while the popular opinion clearly is that practically all of the so-called Trusts, whether recipients of these special favors or not, possess monopolistic power, and are properly called monopolies. Any differ-

ences of opinion that arise over such a question are usually differences coming from misunderstandings regarding terms. Late decisions of the courts and the common usage of later days justify the use of such expressions—which, strictly speaking, are often self-contradictory—as "partial monopoly," "temporary monopoly," "virtual monopoly," etc. It should be kept in mind that these expressions themselves call attention to the difference between those conceptions and that of, let us say, a legal monopoly. In the case of the legal monopoly, the monopolist has absolute control of the market, and may forbid under penalty of law any competition whatever. The monopoly price, then, will be fixed on the basis of the greatest net returns to the manufacturer. In determining this price, the cost of production for our purpose here being assumed to be constant, the manufacturer takes into account mainly two factors, the number of sales that can be made, and the price, or, to put the matter in another way, the effect of price upon the demand. Will the net returns be greater with more numerous sales at lower prices, or with fewer sales at higher prices? The question of competition does not enter into

the problem. Only the demand need be considered.

On the other hand, it seems to be generally conceded (at any rate the courts and popular usage concede it) that it is proper nowadays to use the word "monopoly" even when the element of competition is not entirely eliminated. A manufacturer who controls, let us say, 90 per cent. of the output of any product is enabled to put prices considerably higher, for the time being, than could any one of ten active competitors, each one of whom controlled not much more than 10 per cent. of the output, or than fifty competitors, no one of whom controlled more than 3 or 4 per cent. of the output. The manufacturer with 90 per cent. of the output must, for the time being, supply a very large majority of would-be purchasers. If he puts his price above former competitive rates, even to a considerable degree, it will still be true that a majority of the customers must buy from him, since the other sources of supply are not sufficient to meet their needs. To be sure, exorbitant prices cannot be held for any great length of time without calling competitors into the field; but, in many instances, a rival power-

ful enough to make really effective competition could not build and equip a new plant, costing possibly some millions of dollars, short of two or three years. While one may grant that under those circumstances the monopoly would be only temporary, it clearly seems proper, as it certainly is common, to say that the manufacturer possesses, at least temporarily, a monopoly. He certainly is exercising and can exercise for a considerable length of time a really monopolistic power. It is also, however, true that in fixing prices so as to secure under the circumstances the greatest net returns, he has to take into consideration this third factor—that of potential competition—which does not enter into the problem when the monopoly is legal in its nature.

He may find it best to secure the greatest returns possible for only a short time, knowing that, if he follows that course, competitors will comparatively soon force him to lower his prices. Perhaps the best example of a temporary monopoly following this plan is to be found in the case of the Wire Nail Pool, which existed in the years 1895–96. The Pool was enabled to increase the prices rapidly from

$1.45 per hundred to $1.80, to $2.15, to $2.65, to $2.85—where it held them six months—to $3, for two months, and finally to $3.15, where it held them six months more before the break came. By the end of that time, after some eighteen months of monopoly, competitors had succeeded in providing facilities for manufacture, so that the Pool was broken, and prices fell back to a competitive rate, although not quite so low as they had been before the organization of the Pool. Indeed, in this case, the boldness of the Pool managers in pushing prices so very high doubtless extended the time of their monopoly. Competitors enough to break the Pool would have arisen sooner, had not each one anticipated its speedy collapse on account of its high prices promising enormous profits. Each believed that some one else must very soon enter the field.

On the other hand, it may be that the so-called capitalistic monopoly may consider it wiser to attempt to secure its returns permanently. In that case, while it may perhaps keep prices somewhat above former competitive rates, it must keep them low enough so that the temptation for competitors to enter the field will not be great, and it must be able to put them with-

out absolute loss lower than it would be possible for an ordinary rival to manufacture and sell.

It would probably be granted by all that an organization controlling for the time being 90 per cent. of the output of any product, by putting its prices down, can compel its few rivals to follow; while, on the other hand, it may put prices up above former competitive rates, and can still for a considerable length of time control sales, inasmuch as the other sources of supply cannot fill the demand. If its competitors, controlling only 10 per cent. of the output, put prices up, they will make practically no sales, inasmuch as the combination can supply on short notice the entire market; while, on the other hand, if they put prices down below the market rate, the combination will not be compelled to follow in all places, inasmuch as the competitors cannot supply the entire market. It need meet their prices only in their own localities. In fact, it is not infrequently the case that the small competitor, owing to the fear of customers that he may not be able to supply their orders, will be compelled to sell very generally at something below the market rate as fixed by the combination. Late testi-

mony, given before the Industrial Commission, as has been previously stated, seems to show that some of the competitors of the American Sugar Refining Company have during the past year, for a considerable part of the time, been compelled to sell at one-sixteenth of a cent per pound below the market rate.

Will now experience justify the contention that mere possession of great capital will give substantially no monopolistic power permanent in its nature, unless some element of legal or natural monopoly or some special favor, such as comes from the tariff or from discriminating rates on railroads, be also secured? Of course this question cannot be settled absolutely on a basis of fact until after more years of experience; but certain advantages come from the possession of large capital which clearly under our present system of laws tend toward monopoly; and, so far as we have a basis of experience in fact, that experience seems to justify the belief that monopoly within certain limits (*i.e.*, monopoly as the word is at present used, meaning unified control enough to hold competitors well in check, as evidenced by the power to put prices higher than former competitive rates while still

excluding nearly all competitors), as has been intimated, may be secured simply by the possession of large capital. This power to get higher rates depends generally upon the ability to put goods on the market without loss at lower rates, if need be, than can its rivals.

A large combination, controlling from 75 per cent. upward of the output, with its manufacturing plants favorably located in different sections of the country, would certainly have a decided advantage in freight rates, especially if its products were bulky, over any competitor who would set up in business, unless that competitor were to enter the contest with substantially equal capital. If such a rival entered the field, there would be in operation manufacturing plants which, on the whole, could readily supply one-half more product than the country needed. It may readily be granted that if capital were on hand to be invested in such large amounts, the new organization could force the old combination to sell at former competitive rates or lower. Those, however, who take the position that potential competition will prevent prices from going at all above former competitive rates, overlook the fact that new capital is

not at all likely to be invested under such circumstances, unless the profits of the combination are put very high indeed. The reason for it is perfectly evident. It is absolutely certain that, if competition of that kind is tried, prices will be forced down not merely to the normal competitive rates among small manufacturers, but far below that, and those investing their capital for purposes of competition are certain to make, instead of the high profits of the existing combination, very low profits or none at all.

The same situation exists, regarding the advantages of a large organization with branches in different parts of the country in the possibility of its lowering prices to cost or lower in special localities, for the sake of forcing out its smaller rivals, while keeping prices elsewhere above competitive rates among small manufacturers. This power of destructive competition alone, which may depend solely upon its large capital shrewdly invested, is sufficient to enable it to crush out any small rival. On the other hand, if a rival powerful enough to meet its cuts in substantially all markets were to enter the contest, it would be with the absolute certainty that, instead of securing high prices and

the consequent high profits of the existing combination, the result must inevitably be a competition so fierce that prices would be forced below usual competitive rates, and profits would entirely disappear. If it be suggested that such competition might be started with the idea of selling out to the combination, the fact still remains that this enlarged combination, organized with the certainty that it would possess plants sufficient to supply considerably more than the normal demand of the country at remunerative rates for a period of years, would, in all probability, make low profits on the total capital invested. If it attempted to make high ones, its prices would need to be put so high that still other competitors would enter the lists, and in course of time a reorganization must take place which must result in great loss of capital. This ultimate result will make the first strong would-be competitors wary.

This same line of argument applies to practically all of the advantages that are to be secured by a large industrial plant. The only difference between the large business and the capitalistic monopoly is, after all, one of size and power which come from capital. A large

manufacturing establishment which does not supply more than 10 per cent. of the output of the country may, perhaps, as regards the division of labor in the manufacturing plant itself, be able to manufacture as cheaply as a great combination which controls 90 per cent. of the output. On the other hand, in many lines of industry, it does not have the same facilities for marketing its product, owing to increased cost of transportation and a relative increase in the cost of advertising. Its power of competition is also smaller, since it cannot so readily make cuts in special localities against small competitors while keeping up its prices elsewhere, and since, also, supplying so small a part of the market, it cannot get its prices even temporarily above normal competitive rates. Neither can it secure the numerous other advantages of a great combination which have already been cited.

This element of fear on the part of the small would-be competitor, who knows that he can be crushed out, is the influence which keeps him from investing his capital until the combination is securing considerably more for its product than competitive rates among small

manufacturers. The certainty which keeps the large would-be competitor out, even when prices are considerably above such competitive rates, is that after he has entered the business the existing combination must force the competitive fighting so hard that profits will entirely disappear during the contest; and the knowledge that if a combination with the competitor is made, it must be with so large a capital and so much surplus productive capacity that even for a goodly time in the future the profits must be comparatively low, or more probably non-existent; while the endeavor to make profits would push prices up again which might tempt in new rivals.

The only competition that is likely to prove effective, if any does, is that from another great combination in a collateral line of work. For example, a great steel combination might effectively add to its plants some tin-plate mills. This movement has already begun, both in the way of competition and of combinations which attempt to include all steps of manufacture from the mine to the highly finished product. Such combinations will probably extend still further; but this fact does not change the principles laid

down. It simply points to larger consolidations.

It will thus be seen that we may make properly a distinction between merely large capital and capital large enough to give an organization a virtual monopoly. It also seems certain that the sources of savings of a great combination, added to this fear of the attacks by great capital, are sufficient, in spite of potential competition, to enable a large combination to secure permanently under existing laws profits considerably above those which could be secured under a competitive system of smaller men, although not so high as might readily be secured by a legal monopoly or by a natural monopoly. This fact seems to justify the use of the expression "capitalistic monopoly," although of course one may readily concede that the power of monopoly in this case is not so complete as in the others.

One may grant still further that experience so far does seem to show that these larger combinations have ordinarily pushed their prices so far above usual competitive rates that other capital has entered the field and pushed prices from time to time back to, or often below, former competitive rates. On the whole, however, the fact

that, during the twelve years of its existence, the American Sugar Refining Company (with capital stock not a little watered, if one judges on the basis of cost of reproduction and running cash capital) for more than nine of these years has been able to keep its margin between raw and refined sugar considerably above the former competitive margin, and has paid dividends of 7 per cent. on its preferred stock and 12 on its common stock, while laying up a surplus, seems to show that its large capital has secured more than former competitive prices, and that it has had certain monopolistic power. The nature of competition between large competitors as compared with that among small rivals is considered at length in the chapter on Prices.

The assertion made that the Sugar Combination has also received special favors from the railroads may or may not be true. It certainly has not been proved, while the other reasons, and the undeniable facts regarding the increase in the margin between raw and refined sugar, as shown in the chapter on Prices, furnish sufficient cause for the high dividends. A somewhat similar assertion may be made regarding

the Standard Oil Company. It was doubtless true that in earlier years it received great favors from the railroads. It is possible that it has received special favors from the railroads at times since, but it has not been proved that such favors in the form of discriminations (except those coming directly from its large capital, which enables it so to locate refineries and supply markets that it has an advantage) have been received to any material extent, if at all, of late years, while it has been proved that its profits have been much greater during these later years than before.

The other advantages claimed for the capitalistic monopoly, in crushing competitors by local cuts in prices, in transportation, and in other ways that are perfectly legal and normal in their nature, however unjust they may be, certainly seem in themselves enough to explain part at any rate of its high profits. Similar experiences are found in the cases of other combinations of lesser note ; and yet it ought to be repeated that so far most combinations have overreached and have paid the penalty of trying to secure exorbitant profits. More experience is needed to teach most of them the art of permanent mo-

nopoly—an art that, when it is learned, will need to be kept under careful control by society.

Even as regards the special discriminating favors that are mentioned by those who believe that there is no such thing as capitalistic monopoly, it might readily enough be claimed that those special favors in themselves are secured only by virtue of the power of large capital, but that would be a technical claim which need not be made.

Possibly the chief influence in the long run in promoting combinations of capital, as well as their most far-reaching effect, is the element of personal ambition which is fostered by monopoly. There can be no doubt that, in the case of the larger industrial combinations, the belief on the part of the managers that a virtual monopoly can be secured, is a powerful element toward bringing about their formation. The pride of power, and the pleasure which comes from the exercise of great power, are in themselves exceedingly attractive to strong men. As one with political aspirations will sacrifice much and take many risks for the sake of securing political preferment in order that he may in this way rule his fellows,

so a successful organizer of business derives keen satisfaction from feeling that he is practically directing alone the destinies of a great people, so far as his one line of business is concerned. Mr. Havemeyer says that his ambition is to refine the sugar of the American people. Mr. Gates says that it was the ambition of the organizers of the American Steel and Wire Company to control the wire output of the world. One cannot say that these ambitions are not as worthy as those of politicians, and as natural. No one can question that these elements of personal satisfaction and pride are most powerful factors in all lines of social intercourse, and this pride could not be gratified in business short of the belief on the part of these men that they can secure a practical monopoly. This ambition will not be gratified by the control of merely a very large business. Napoleon was not content to be the head of a great state. His ambition would brook no rival. May not the ambition of a sugar king or a petroleum magnate well be of like imperial nature, though in a more restricted field?

Connected with this belief in the power of

monopoly within the home market is that of the ability of the great combination to enter new, and especially foreign, markets. Much more capital is required to introduce into a foreign market a special product than would be required for the extension of the sale of that product within one's home country. The power of great capital thus enables the combination to extend its trade as could otherwise not be done, although this power by no means necessarily implies monopoly. The American Tobacco Company has developed a great market in Japan, India, and throughout the Far East. In some instances even, it is said, it has been forced practically to create the taste for tobacco and to break down religious scruples in order to introduce its product. One may question the value to those peoples of this "educated taste"; one cannot question the skill and power needed to accomplish the result. The Standard Oil Company has pushed its products into practically all the markets of the world. In neither case could these industries have so expanded without the possession of very large capital; and this ability to manage the foreign market in conjunction with the home market, is beyond

doubt an advantage of the large organization which the small competitor does not possess. The possession of a secure foreign market gives the large manufacturer still further power in handling the home market, so as to give him a virtual monopoly.

Granting, then, all that can be said with reference to the special advantages that come from legal monopolies and from natural monopolies, it still seems reasonable to believe that without them what must, under the present usage of terms, be called monopoly, does, through the power of capital, exist, temporarily at least; and apparently it may exist permanently, exerting, if it wishes, some if not all of the power exercised by other monopolies, and needing like them the restraining hand of the state through courts and legislatures to prevent abuse. The term "capitalistic monopoly" has been given to this kind of business organization, and until a better expression is found, it seems well to make use of that.

CHAPTER V

PROMOTER AND FINANCIER

If several different firms or corporations are to combine into one, or if a large corporation is to be organized, it is ordinarily true that some individual must undertake the task of carrying on the negotiations among the different establishments or individuals concerned, of providing a plan of organization, and of persuading the different individual owners that it is to their advantage to enter into the combination on the terms suggested. This persuasive optimist who can succeed in convincing each that it is for his interest to join the organization is the promoter.

In the organization of many of our later industrial combinations, the large pay of the promoter has come directly or indirectly through the issuance of watered stock. To see fully the common practices in connection with such work, we may profitably sketch hastily in review the more usual processes and forms of organization of corporations.

A certificate of stock is essentially a receipt for a certain amount of capital paid into a company to enable it to carry on business. This capital is divided into shares, usually of $100 each, and the certificates of stock stand for a certain number of shares. It is ordinarily supposed that the certificates of stock represent capital paid in cash or an equivalent of cash, so that ten shares of stock would represent $1,000 in cash or in an equivalent of cash. If stock is issued only for cash, there is little likelihood of injustice being done, or of either the investors in the stocks or those who are doing business with the company being deceived with reference to the terms on which the business is organized.

In most cases, however, when a company is organized, considerable amounts of property need to be purchased, either land, or buildings, or tools, or property in some other form, adapted for carrying on the business. In many cases persons who wish to invest their money in the organization are themselves the owners of this desired property. In consequence, it is a matter of convenience that shares be issued directly or indirectly for this property instead of for

cash. Sometimes, to avoid the appearance of issuing stock for property, the managers of the company agree upon a price in stock at par value at which a special piece of property will be purchased. The managers then go through the form of handing their checks to the property owners for the sum agreed upon, and receiving in turn the checks for an equal amount of the owners of the property for stock issued then and there. In a late case certified checks of a leading Trust Company were used to pay for the properties—a loan for the amount for one day having been made for that purpose—and the checks of the mill-owners paid the loan the next day. If the property is tangible, such as land or buildings, and the estimate placed upon its value is conservative and fair, there seems to be no reason why the shares should not be issued directly for this property, if there were no danger of injury to any person. Likewise, if the property is intangible, as a patent or a copyright, or possibly the good-will of a business, its value may be as great as that of land or buildings.

Naturally the inventor and the promoter are hopeful of large profits, and will therefore set

a high price upon the patent. If, as is often the case, the invention proves a successful one, the patent may prove to be worth more capital than was estimated at the beginning, and shares of stock therefore issued in payment for it will be worth more than their par value in cash. On the other hand, if the undertaking proves a failure, there will be no tangible property left against which the shares were issued, and the shares themselves may become valueless. In a case like this, where the organization is founded chiefly on hope, there are great opportunities, and the temptations are also very great to issue stock to large amounts, even though the hopes are not well founded.

It may be that in other cases the services of some individual peculiarly skilled in the business may be taken in lieu of cash. Under the partnership form of doing business, it is not infrequently the case that one partner contributes capital in the form of cash or tangible property equivalent to cash, while another partner contributes his skill and time in the form of services, the two partners dividing the profits equally. Likewise in the formation of a corporation: one individual, whose knowledge or

skill or services are thought to be peculiarly valuable to the business, may have allotted to him in the organization of the company a certain number of shares of stock for the services which he is to perform for the organization in the future; or, if he is a promoter whose work has been of special service in putting the organization into a situation to earn large profits, stock may be issued to him in payment for services already performed. Some of our States forbid the issuance of stock for services; others permit it. It is readily seen how a skilful promoter, who may have succeeded in bringing together a large company whose profits, on account, it may be, of some monopolistic feature, bid fair to be large, may readily assume that his services have been of great value to the company, and receive a large amount of stock in consequence. Here again, however, the stock is issued largely on hope, and its value may partake of the fleeting nature of its foundation.

If a business is so profitable that it can earn considerably more than the rate of interest common in the locality upon well-secured loans, it may be wise for its managers to borrow money to enlarge the business. If a firm or corpora-

tion can earn 10 per cent. upon capital invested, it is surely profitable for it to increase business so long as these earnings continue. Even though a half of the capital required to furnish these earnings may have been borrowed at 6 per cent., there has been a net gain of 4 per cent. When the expansion of a business, or even perhaps its present success, depends, therefore, upon the handling of comparatively large sums of money, it is the usual custom to borrow a considerable portion of this capital. Indeed it is not unusual for public service corporations, such as railroads, gas companies, and other like institutions, which possess some natural monopoly, or which have the grant of some franchise that practically gives a monopoly of a certain line of business, to borrow enough capital to pay the entire cost of building the plant, whether railroad or factory. If the establishment can pay anything more than the regular interest on the debt thus created, all of the surplus may go as profits to the stockholders, the persons in whom the legal title of the road rests. It is not at all uncommon for our street railways or our railroads to be in debt—that is, to be bonded —to an amount fully equal to the entire cost of

the road and its equipment. It is customary also in such cases for stock to be issued to an amount at least equal to the cost of building, so that the railroad thus built, which can pay the interest on its bonds and pay dividends on its stock, gives to the first holders of the stock a pure profit to the extent of whatever the money value of the stock may come to, as well as a regular annual profit of whatever dividends may be paid. This issuance of stock beyond the cost value of the road is, of course, what is generally known as stock watering.

The new industrial combinations, which are believed by many of their organizers and promoters to be able so to control the conditions of the business that they may possess a virtual monopoly, are also in many cases in a position to borrow in some form or other a large part of the capital needed for the creation and carrying on of the business, and to leave their stock partly or wholly as a bonus in the hands of those who have organized the company, to draw dividends upon, provided the company can earn more than the interest upon its bonds and a small amortization fund.

Under the laws of our States, of course, a

firm or corporation which fails to pay the interest on its debts is adjudged insolvent, and is placed in the hands of a representative of its creditors, to be managed in their interest. If a business is more or less speculative in its nature and is heavily indebted, there is always danger that in some period of depression it may fail to pay interest on its bonds, and may thus have the management taken out of the hands of its directors. In consequence of this danger, it has been customary of late years for those organizing the somewhat speculative industrial combinations to issue certain classes of preferred stock in lieu of bonds. For example, a company, the cost value of whose plants was not less than $500,000, might issue preferred stock to the extent of $500,000, representing substantially cash to that amount. If the business were fairly well managed, it might be expected that there would be no trouble whatever in paying some interest—say 6 or 7 per cent.—upon this amount of capital. Persons buying the preferred stock might therefore be assured that their investment would be substantially as safe as if the corporation had borrowed that much money and issued bonds in its stead. In

case the company should fail in any one year to earn the full amount of the 6 or 7 per cent. interest mentioned as due the holders of preferred stock before any profits are paid to holders of the common stock, the company would not be adjudged bankrupt, as in the case of the issuance of bonds, but the management of the property would still remain in the hands of the stockholders through their directors as before.

The preferred stock is sometimes given the still further advantage of being cumulative—that is, if in any year or series of years the company fails to pay the dividends mentioned in the conditions upon which the stock is issued, say the 6 or 7 per cent., the amount falling short remains as a charge upon the future profits of the organization, and no dividends can be paid to the holders of the common stock until after this charge has been met. In this way preferred stock becomes substantially as secure in all particulars as bonds, unless there should be a later bond issue. Practically the only difference is that in the case of the failure of the preferred stock to secure its dividends, the management of the company remains in the hands of the Board of Directors; whereas in the case of failure to pay

interest on bonds, the management of the company is placed in the hands of a receiver.

As has been intimated, a large proportion of the new industrial combinations issue preferred stock instead of bonds, the preferred stock often representing what is supposed to be the fair cash value of the plants themselves. For each share of preferred stock there is also frequently issued to the holder thereof one or more shares of common stock as a bonus, which may fairly be considered "water," and which takes the place of the common stock so often issued by public service corporations when the cost of building has been substantially raised through the selling of bonds. If the company should be successful in making large profits, dividends will be paid on the common stock in proportion to its degree of success. If the company is less successful, while holders of the common stock will receive no dividends, they will still have a voice in the management or possibly indeed the entire management of the business of the corporation, and the fluctuating chances for future business and future profits will give the common stock a more or less range of value as time goes on.

It is largely through his skill in arranging

all these details of organization and of issuance of stock that the promoter gets his profit. In most cases, as it has been his special labor to bring together the corporation or the combination of corporations whose profits are largely a matter for the future to determine, his pay is justly enough given him in part or altogether in the more speculative securities of the company organized—that is, in common stock. For example, testimony given before the United States Industrial Commission seemed to show that in the organization of the Standard Distilling and Distributing Company, for each $100,000 cash value that was secured, in the form of either cash or tangible property, there was issued to the promoter $150,000 in common stock. In addition to this, $100,000 in preferred stock and $100,000 in common stock were issued to the seller of the property who entered into the combination, and $100,000 preferred and $150,000 of common stock were issued to the underwriters, the nature of whose services will be spoken of hereafter. It will be noted that each $100,000 cash valued property was presumed, if dividends were to be paid, to earn interest on $600,000. Would the attempt to

do this put prices up, especially if the organization had some monopolistic power?

An account of the organization of the American Tin Plate Company will show one way in which a promoter may receive his pay. Most of the manufacturers of tin plate in the United States, feeling severely the lessening of profits that came from competition and depression in business, thought it wise to organize a combination which should practically control the market. To that end they asked Judge William H. Moore, of Chicago, to aid them. He visited the different tin plate manufacturers and secured an option of purchase for cash at a fixed sum upon the plants of each one of the firms or corporations which contemplated entering the combination. After these options had been secured, Judge Moore organized a company with an authorized capitalization of $50,000,000, of which about $46,000,000 were later issued. For this capital stock there were to be furnished to the company some $4,000,000 in cash as running capital and the plants of all of the companies which entered into the agreement. It was understood that the cash options on the plants amounted to something less than

$18,000,000, although as the contract was made with each establishment separately, and as each one of the options was a purely private matter between the promoter and the person selling, it was not publicly known exactly what sum was agreed upon for the value of each separate plant.

It was understood that in most cases the choice was given to each company to receive for its plants either cash or preferred stock, of which the par value should be an equal amount with that of the cash option, together with a like amount of common stock as a bonus. In this way it was supposed that about $18,000,000 of preferred stock and the same amount of common stock were issued, as against the properties and cash, whereas $10,000,000 more of common stock went to the promoter to pay him for his services and for all of the expenses of getting the organization together. It was, of course, necessary that organization fees, lawyers' fees, etc., be paid. It was also probably true that in order to raise the necessary cash certain commissions had to be paid to bankers and others who advanced it. It might have been also true that, instead of the pre-

ferred and common stock being taken on the terms suggested before, better terms in certain instances had to be given, and it is even possible that in other instances less favorable terms may have been accepted. Inasmuch, however, as at the time that the company was organized one share of preferred and one share of common stock together sold for considerably more than $100, it seems fair to assume that the promoter had the opportunity of making very large profits indeed out of the $10,000,000 in common stock assigned him for covering the cost of formation and for his pay for services rendered. It will be noted that aside from this $10,000,000, he had the opportunity of making much more if he could make close enough bargains with those who entered into the organization so as to buy their plants at less than the $18,000,000, which seems to have been generally agreed upon as the value of the plants with the cash capital; whereas, on the other hand, if he could not secure them for that sum, his profits would be correspondingly diminished.

With the promoter ordinarily works the "financier" or the underwriter. If the com-

pany is to be a success, it is necessary that the stock be sold in order that the needed capital in the form of either plants or cash, or both, be secured to carry on the business. Private bankers are ordinarily chosen to negotiate the sale of stocks and bonds, and very frequently they are persuaded also for a consideration more or less large to underwrite the stock. By this "underwriting" is ordinarily meant an agreement to secure the sale, at a named price, of a certain amount of the stock of the company. If persons not connected with the company or the banker concerned purchase all of the stock under the agreement at a price as high as that named in the contract, the banker has no further responsibility. If, on the other hand, all has not been sold at the time agreed upon, the banker takes the remainder at the rate mentioned and furnishes the cash to pay for it. In that case, his profits or losses will depend upon the price at which he may be able thereafter to sell the stock; or in case he holds it, upon the dividends that may be paid by the company in its regular course of business. It is commonly believed that the sums asked by the underwriter are as high or higher than those

of the promoter. A banker agreeing to furnish millions of dollars to a company in order to enable it to enter upon a line of business in the way in which its promoters prefer, often takes, of course, considerable risk, and will wish corresponding pay. The pay of the underwriters in the organization of the Standard Distilling and Distributing Company has already been noted. High officers in some of the industrial combinations have stated that the cost of organization, including the pay of the promoter and financier, amounts often to from 20 to 40 per cent. of the total amount of stock issued, dividends having therefore, if possible, to be paid upon this amount of stock at least in addition to that which represents the cost value of the plants or the amounts paid for them.

Not infrequently the work of the financier and that of the promoter are combined, the profits depending upon the terms at which the stocks are bought and sold. The case of the Distilling Company of America is one in point. Its authorized capital is $55,000,000 of 7 per cent. cumulative preferred stock, and $70,000,000 of common stock. Of this total sum, $31,250,000 of preferred stock and $46,250,-

000 of common stock were put into the hands of the organizers or promoters of the combination for the purpose of bringing about the organization. The company was incorporated to purchase and hold the stocks of four existing companies, each in itself a combination, and to secure control of certain rye distilleries. The organizers or promoters were to use the stocks placed in their hands to exchange in certain named proportions for the entire stock of each of the existing combinations, to furnish also $1,500,000 in cash for working capital, and to buy two rye distilleries owned by the Hannis Distilling Company and a rye distillery in St. Paul. A large proportion of the stocks of these different companies were as a matter of fact secured, considerably more than 90 per cent. in each case. It was testified that the rye distilleries cost some $2,000,000. If the entire stocks of all of the four companies had been exchanged at the rates agreed upon, there would have remained in the hands of the organizers $10,710,000 of preferred and $13,360,000 of common stock, for which they were to secure the $3,500,000 needed for purchasing the rye distilleries and furnishing the $1,500,000 to be used for work-

ing capital. At the rate at which the stocks of the new company sold very soon after its organization, these stocks would have given a net profit to the promoters and financiers, had they been able to sell them promptly, of from $3,000,000 to $4,000,000 for their services; but one must remember, of course, that the effect on the market of an attempt to sell these promptly would probably have been very depressing. The speculative nature of such a business is readily seen, when one notes that the stocks declined rapidly in value, so that if the organizers had them left in their hands six months later, they would have barely sufficed to furnish the $3,500,000 necessary to enable them to fulfil their contract.

There can be little doubt that many of the promoters and financiers have in the past agreed to aid in the organization of industrial combinations with the hope of securing large profits by the sale of stocks without themselves taking any material interest in the business. This method of furthering combinations has, beyond question, proved one of the greatest evils connected with them, inasmuch as it has given a decidedly speculative turn to industrial stocks,

such as was found in the market for railroad stocks and bonds fifteen or twenty years ago.

Those companies that have been organized with a fair degree of conservatism have often assumed or have compelled the constituent companies to pay off all their debts before the parent company began business. The effect of this policy in large sections of the country has been to relieve many small banks of the burden of carrying, with considerable risk at times, the business of these companies. At the same time it has deprived many of these small banks of their best customer. On the other hand, many of the large city banks, from underwriting or accepting as collateral the stocks of the new parent companies, find themselves carrying a heavy burden which it is very difficult to shift. The instability of these securities, with the large numbers of them thrown upon the market, has tended during the last year to make bankers much more conservative in accepting the stocks as collateral for loans, or in attempting to place the stocks upon the market; so that the worst period of this speculative organization has, in all probability, passed.

Perhaps the worst feature from the social

point of view, connected with this method of promotion of industrial companies, has been the practice (a practice commonly stated and believed to be exceedingly common, although rarely proved) of securing the influence of bank officials—presidents, cashiers, or directors—through the payment to themselves individually of large amounts of stocks or even of cash, to persuade their banks to accept these securities as collateral on loans, or to underwrite the stocks and thus furnish cash for the companies. It seems most unfortunately to be true that in many cases officials of banks and trust companies have failed to realize to the full the nature of their trusteeship as it concerns their stockholders and depositors. Nor can we overlook the indirect influence of such acts by these prominent financiers. The mere fact that a prominent bank or a successful capitalist is willing to invest in the stock of a company is enough to lead hundreds of small investors to follow, often to their injury. And beyond the financial evil, in the long run, is to be feared most of all the lowering of moral tone in business circles if such practices were to continue. The essence of successful business as well as of

social and political success of the highest type is faithfulness to a trust, a keen sense of honor. This evil of speculation, coming from the work of the promoter and financier, which has led to the substantial bribery of bank officials and to excessive stock watering on the part of the industrial combinations, is to be counted among the great evils which have attended their organization. They should be so conservatively capitalized and managed that their stocks will prove as safe an investment as farm mortgages, and a far more convenient one for the man of small means.

CHAPTER VI

THE BASIS OF CAPITALIZATION

So much has been said of late years with reference to the evils of over-capitalization and of fraudulent practices in connection with stock watering, that it may be worth while to consider briefly the actual and the proper basis of capitalization of industries. It is ordinarily assumed in discussion by those who are opposed to what is generally called "stock watering," that stock ought to be issued for cash or for what is called the "actual cash value" of the property taken. It is generally assumed that the actual cash value will represent fairly well the cost of reproduction of the properties in present condition together with needed running capital in the form of cash on hand. Such an issuance of stock in an ordinary manufacturing business, under conditions of fair competition, will give dividends in the long run probably not materially different from, but perhaps somewhat higher than the usual rate of interest in the community.

The Basis of Capitalization

It seems to have been the purpose of the corporation law of Massachusetts, and of some other States and countries, to secure capitalization on this basis. The new law for Puerto Rico, lately passed by Congress, takes this position, and shows how conservative it has tried to make its action on this subject. In Massachusetts, not merely must the directors or organizers of a corporation, part of whose stock is issued against property, make oath that the property has been received at its actual cash value, and that the stock is issued at this rate at par, but the Commissioner of Corporations of the State must also certify that he is satisfied that this is the case. Let us note just what this means. This is the capitalization of the plant and running capital, not necessarily that of the business as a going concern.

On the other hand, most business men are of the opinion that the value of any property depends upon its earning capacity, its value as "a going concern," and that it is wise and just to issue stock of a corporation upon that basis. In the case of corporations, such as those mentioned in the paragraph above, the probability is that the reproduction value of the establishment

would correspond closely with the capitalization of its earning capacity at current interest rates. On the other hand, it must be remembered that much higher rates of profit can often be made, either (*a*) in times of more than usual business prosperity, or (*b*) under exceptionally skilful management, or (*c*) with the possession of considerable monopolistic power, from whatever source derived, whether the possession of patents, or of exceptional good-will, or of a very large capital. Mr. Bryan's dictum that "only in the case of monopoly can you secure dividends upon stock that does not represent money invested" is not always strictly accurate; but it is so generally true that it ought carefully to be noted. The times of prosperity when this can be done without monopoly may be fleeting. The exceptional skill or the monopolistic power are likely to endure for a longer season. Under those circumstances, with any of these advantages, the corporation might readily pay dividends of the usual rate of interest on a capitalization twice or three times more than the reproduction cash value of the plants.

Attention is frequently called to the case of a newspaper with a tangible property of, say,

$100,000. Such a newspaper, ably edited, with a strong constituency of subscribers and a large advertising patronage, might readily pay good dividends on $1,000,000 or more. Why should the capitalization not be placed at $1,000,000, regardless of what the plant might cost? The earning capacity may be due largely to the skill of the editor, or to the fact of connection with some political party, or to the peculiar business skill of its advertising manager, or to the good will gained through many years of skilful catering to the public taste. Why, it is asked, should not the capitalization be made upon its earning capacity rather than with reference to the cost of the plant?

Most business men, as has been intimated, prefer capitalization on the basis of earning capacity. In the first place, if the dividends declared seem to be at about the normal rate of interest, it conceals the actual state of the business from all persons not so situated that they either know the details of the business of this special establishment, or know that kind of business so well that they may readily judge the profits from external signs. This concealment of large profits lessens the temptation to rivals

to enter the business, and lessens also the danger of popular disapproval, which is often expressed against those who make large profits upon capital invested, even though such profits may have been made more by the special individual skill of the manager than by the advantage that comes from the possession of capital. A prominent stockholder in a large gas company lately expressed the fear that it might be necessary soon to lower the price of his gas. The profits were becoming too large to please the public, and it seemed difficult to find an excuse for issuing more stock, though such excuses in the past had been found and for a time had served to conceal the rapidly increasing profits.

Again, a large capitalization is more advantageous, provided the stockholders wish to sell. If in any line of securities, for example, the stock of corporations that regularly pay dividends at 6 per cent. stand at par, those of similar nature and class of which the dividends are regularly 3 per cent. will usually stand at more than 50. People seem to like to deal in large figures, and there is also a greater element of speculation present perhaps in the latter case, though either motive is probably largely an un-

conscious one. But, because they will sell for more usually, a large capitalization is often desired, even by conservative business men.

Still more is this the case if the business is speculative in its nature. Doubtless the stocks of many industries which have been largely overcapitalized are more pleasing to speculators on that account. They may not pay dividends; it cannot be expected that they will pay dividends in the near future; but on account of the instability of the business, their fluctuations up and down are more readily affected by rumors or by other slight influences on the stock market — and speculation flourishes on fluctuations.

It is claimed by many that the public is little affected by stock watering, and has little interest in the basis of capitalization. If the capitalization is high, the value of the stock will be correspondingly low, and vice versa. Business men will invest their money, it is thought, on the basis of actual values, as shown by earning capacity, regardless of the par value of the stocks, and neither prices nor investors are materially affected, whatever the basis of capitalization. After a business has been long estab-

lished and its methods of management are well known, this contention is largely true. On the other hand, when new corporations are organized, and only those who are closely connected with the management know on what terms properties are purchased for which stock is issued, there is great opportunity for deception. Even a public statement of actual earnings of different corporations for a series of years past may be so arranged that the results will be decidedly misleading. Average profits over a period of five years might well be 10 per cent., when if a period of seven years were taken the average would be not more than five. Even the profits of the last two years might be nil. The ordinary investor, who has not had the opportunity of studying the details of organization, is unable to judge.

Even capitalization at the reproduction value of the plants may be as misleading in many ways as capitalization on supposed earning capacity, because unskilful management or a changing state of the market may either double the value of the plant or halve it within a year or two, if we are to take as the basis of value what it might actually bring in the market,

which depends again, as has been intimated, on its earning capacity.

There can be no doubt, too, that a high capitalization brings pressure to bear upon officers of corporations to raise prices of their products. Payment of dividends is likely to seem their first duty, and they push prices as high as the market will bear.

The only just method of preventing the evils which are likely to come through the capitalization of any establishment, is to place clearly and fully before all investors, at the time of the organization, the plan of organization itself, the amounts actually allowed for all and each of the properties taken into the establishment, with as complete information as possible regarding these properties, so that a fair judgment can be made regarding both their cost and their earning capacity. In like manner the condition of the business from year to year must be impartially set before the public, so that its earning capacity can be fairly known. Whatever capitalization is then made at the beginning, the value of its stock will in the main be based upon its fair probable earning capacity, while the changing conditions of business from year to year being

made fully known would determine with even justice among the different parties concerned the changing values.

The chief evils of our over-capitalization in recent years have appeared in those organizations that have issued stock far beyond any reasonable likelihood of dividends on the common stock, short of monopoly, and whose promoters have been primarily, not business men, but gamblers.

A proposition has been made to avoid all evils connected with capitalization by providing that shares of stock, representing dollars as their par value, should not be issued, but that a plan reported by a committee of the New York State Bar Association should be adopted, which it was thought would afford a remedy for all these evils. The proposition is as follows:

"To permit the formation of a distinct class of business stock corporations, whose capital stock may be issued as representing proportional parts of the whole capital without any nominal or money value.

"The effect of such amendment would be to provide for the measurement of the interest or shares of the members of such a corporation

by a statement of proportion, as in case of the part owners of a ship, and not by an arbitrary assignment of money value, which is delusive in the case of every corporation whose capital stock has a market value either more or less than its nominal par value.

"Such an amendment, though somewhat radical, is not altogether novel. It embodies a principle adopted in corporation laws in Germany.

"It would relieve any possibility of injury to the public from misleading representations as to the money value of corporate stock, and would also relieve from embarrassment conscientious corporate officers often compelled to deal with legal fiction as to which they have no personal knowledge, as though it were a reality within their own observation." *

The suggestion is valuable and would apparently prove effective; but there is no general interest in a change, and it is probably, for the present at least, not practicable.

The effect of over-capitalization upon prices will be discussed briefly in a later chapter.

* Proceedings of New York State Bar Association, January, 1892, p. 148.

CHAPTER VII

METHODS OF ORGANIZATION AND MANAGEMENT

Before the compact combinations of the present day were known, various forms of specific agreements among independent corporations and individual competitors were common, such agreements often being called pools, although the earnings of the different companies were not put into one common stock from which profits were to be distributed.

For some years before the organization of the Whiskey Trust, competition had been very fierce among the different distillers, and agreements were usually made from year to year which fixed the amount that each distiller should produce during the year. At other times, under agreement, an assessment was levied which each distiller should pay upon each bushel of corn mashed, in order to export the goods at a loss, and thus, by relieving the home market of its surplus, make sufficient provision for selling

the domestic production at a remunerative price. These so-called pools were not stable. Ordinarily, within a year, some one of the parties to the agreement would be discovered distilling more than his proportion of the normal output, and the result would be a break in the pool.

Agreements for fixing the price of the product or for dividing territory are perhaps still more common. A noteworthy late case is that of the Addyston Pipe Company,* in which the different parties agreed not to enter into competition with one another. The contract was to be carried out in the following way: a committee consisting of a representative from each corporation entering into the agreement set the price for each job of work, and the corporation that offered the largest bonus for the job, secured it, the others putting in higher bids to make an apparent competition. It will be seen that, although in this agreement there was no uniform fixing of price or of profits, competition was done away with, and the agreement may fairly be considered as one tending to create a monopoly, or, at any rate, to bring about

* United States v. Addyston Pipe and Steel Co., *et al.*, 78 Fed. 712; 85 Fed. 271; 175 U. S. 211.

all the evil effects of a monopoly and to oppress the consumers.

An agreement of a quite different nature has been formed among coal dealers in one of our cities. A committee of several of the leading dealers determine the price at which coal shall be sold by all wholesalers and retailers. They also keep a supervision of the trade, seeing that full weight is given, that the quality of coal is exactly as represented, and that the consumers are protected against dishonest dealers as well as the dealers against excessive competition. If any dealer cuts the price to any of his consumers, he is heavily fined by the central committee. If he refuses to pay the fine, an agreement with the mines stops his securing a sufficient supply of coal to meet the needs of his customers. The initial cause of this agreement was said to be excessive competition. Some of the dealers finding the prices so low that they could not make a profit, came to the conclusion that some must be giving light weight. An investigation and a re-weighing of several loads proved this. The combination was then formed, which may be said to exist primarily to protect the dealers and incidentally

the consumers against this unfair kind of competition, which resulted in their detriment. Prices are fixed at a rate which is said to give only moderate profits to retailers and wholesalers, and fair prices to the consumers; while the consumers, as has been said, are secure against light-weight loads and poor quality of coal. It should be noted that those who fix the "fair" prices are interested parties; but experience may have shown them what is really wise and fair for all. All those dealers who are willing to conduct their business fairly and honorably at the rates fixed are allowed to make a reasonable profit. Longer experience may perhaps show different results. At present reports are favorable.

Owing to the fact that ordinary pools and agreements of the kind mentioned above cannot usually be well enforced, the Standard Oil Company in 1882 organized the Standard Oil Trust, a form followed afterward by the so-called Whiskey Trust (the Distillers' and Cattle Feeders' Trust), and also by the Sugar Trust. The form of organization is substantially this: the stockholders of each of the separate companies assign their stock to a certain number

of trustees—seven or nine—giving thus an irrevocable power of attorney to these trustees to vote the stock as they see fit. The trustees issue trust certificates to the stockholders in lieu of their assigned stock, and it is upon these certificates that profits are divided. All of the earnings from all of the different members of the combination are put into a common treasury, and whether one of the manufacturing establishments is running or closed makes no difference in the profits received by the stockholders of that special company. The trustees, by having in their hands the voting power of all of the separate corporations, of course elect whatever officers of the corporations they see fit, and direct thus, as seems to them wise, the affairs of each separate corporation.

The decision* of the New York Court of Appeals against the Sugar Trust, declaring that the act of a corporation in thus putting its stock into the hands of trustees and abdicating its own independent power of self-direction, was *ultra vires*, together with hostile legislation in other States and an apparent hostility of public opin-

* The People of the State of New York v. The North River Sugar Refining Co., 121 N. Y., 582.

ion, led the old Trusts to give up this form of organization and to reorganize. The Sugar Trust and the Whiskey Trust organized as individual corporations, the certificate holders becoming stockholders in a new corporation which owned all of the plants that had been owned by the individual corporations before the formation of the Trust. In both cases there was substantially no change in the management, the trustees of the former Trust becoming directors of the new corporation and the officers of the new corporation remaining substantially the same as the officers of the Trust. It was a change in name, a change in technical legal form, but no change as regards the practical management of the organization.

The Standard Oil Trust followed a different plan. It so happened that the nine trustees of the Trust owned a large majority of the Trust certificates. The Trust then dissolved into separate corporations, the holders of Trust certificates being given shares pro rata in each one of the twenty corporations into which the Trust was divided. Inasmuch, however, as the former trustees then owned a majority of the stock in each one of these twenty different corpora-

tions, they were enabled, without any formal organization among themselves, to direct the affairs of all these corporations in perfect harmony just as efficiently as they had done while acting as trustees and holders of a majority of the Trust certificates. Here, again, there was a change in form; but in this case, instead of the Trust becoming a single corporation, it became twenty corporations, the majority of the stock in each being held in the same few hands, and all of the corporations being managed in perfect harmony.

A comparatively late change in this company of a different kind has been made. One of the separate corporations, the New Jersey corporation, has increased its stock, and so arranged that it can take control of the business of all of the different companies. The stocks of the separate companies are therefore now being exchanged gradually for the stock of the New Jersey corporation, and in the course of time it is expected that this one corporation will own all of the stocks of the twenty different corporations, so that the management will thereafter be not merely practically one, but also technically and legally one under the directors of one

corporation, they voting all the stock of each of the corporations. It is practically a return to the Trust form in all but name.

A voting Trust, somewhat different from the kinds of Trusts described before, is also frequently found. In this form the Trust applies ordinarily only to one corporation. The holders of a majority of the stock of this corporation put into the hands of some few trustees or possibly of a trust company the voting power of the stock, with specific instructions in certain instances as to the way in which this stock is to be voted and the affairs of the corporation carried on. In other cases the power is left to the trustees to carry on the business of the corporation as seems to them wise in accordance with a certain general line of policy laid down beforehand. The individual shareholders may then pledge or sell or dispose of their stock in whatever way seems to them best, but the voting power remains in the hands of the trustees. The purpose of such a voting Trust is, of course, to secure continuity of the policy which, for whatever reason, the stockholders prefer. In some cases it may be that the majority of the stockholders of the original corporation think it

desirable to devote all the earnings for a specific period to the improvement of the property instead of to the payment of dividends. It might be impossible to continue such a policy with a shifting body of stockholders, many of whom might wish to receive annual dividends. If, however, the stock can be transferred, but the voting power remain in a few hands, the policy can be carried out consistently for a fixed period of years.

In the case of the Pure Oil Company and other competitors of the Standard Oil Company, it was thought desirable to place the majority of the stock in the hands of a few trustees, because many stockholders felt that otherwise the Standard Oil Company might in time buy from individual stockholders a controlling number of shares, and thus succeed in absorbing more or less completely one of its chief rivals. It is claimed by the managers of the Pure Oil Company that, owing to experience with some other companies, they had reason to believe that this was the purpose of the Standard Oil Company, and, in consequence, the Pure Oil Company had its stock placed in the hands of a voting Trust.

It will be noticed that in all of these cases the difference between this form of voting Trust and the original Trust as seen in the case of the Sugar Trust, is that in the later cases provision is made simply for the management in a specific way of the affairs of some one corporation, whereas in the other case the intention of the Trust was to unite many different corporations under a single management and possibly in certain cases to secure a virtual if not a complete monopoly of the output.

After the dissolution of the old Trusts, the form of organization into one great corporation that should own the separate plants, became most common. Under that form, as, for example, in the case of the organization of the American Tin Plate Company or of the National Steel Company, each one of the separate corporations sold its plant outright to a new corporation, and the original corporation then dissolved. When the combination was completed, there remained in existence only the one great corporation owning the plants that had belonged before to the separate corporations or to individual partnerships or owners. In no essential particular did the legal aspect of the single new

corporation differ from that of the separate corporations which had preceded it.

The form of organization that seems to have become most common within the last year or two is one that is closely allied to the old Trust form in its essential character. In this case, when a combination is about to be perfected, a new corporation is formed whose purpose it is to buy up all, or at least a controlling share, of the stock of all of the separate corporations that are to come together. The different corporations then maintain their separate legal existence, but their stock is held by the one company. The officers of the great corporation having thus in their hands the control of the stock of all of the separate corporations, and voting that stock as they see fit, elect, of course, from year to year the directors of all of the corporations, and thus by this absolute control of the officers, direct the affairs of the different corporations. In some cases the "parent corporation" (so called, though born from the others), besides owning the stock of the individual corporations, owns also independently some properties of its own; but in other cases the parent corporation owns only the stock

of the separate ones which have entered into the combination. The profits of the individual corporations are made, of course, as before; their dividends are declared; and these dividends are the only source of profit of the parent corporation.

While this form of combination probably doubles the total capitalization in par of stocks, it should be noted that there is no increase in capital, and that there need be no stock watering—although there often is. Neither need there be any more speculative securities created. This fact is often overlooked by those who are appalled by the huge capitalization of industries during the past few years. While new companies have formed, old ones have died that they might live, or the constituent companies pay all their dividends to the parent company to enable it to pay its bills. In this way the earnings of the separate corporations are pooled as effectively as they were in the old Trust. The management is kept as effectively in the hands of the officers. The only difference seems to be a legal one. The parent corporation now owns the stock of the different corporations. In the

other case a Board of Trustees held this stock in trust without themselves having any separate legal corporate organization. These new corporations are, it is true, amenable to the courts in a somewhat more direct way than were the former trustees; otherwise there seems to be no essential difference between these two forms of combination. In this later form of combination the constituent companies have their separate boards of directors, their separate officers, and carry on their business independently, managing it, however, under the general direction of the officers of the parent company. It follows of necessity that the work of all the different corporations is carried on harmoniously. Some one of them may have its plants closed for a time in order to suit the supply of product to the demand; on the other hand it may even be that prices will be fixed by the officers of the several companies; but in case of need they can always be readily controlled.

It should be noted that among these various forms of combinations there are two kinds, as was indicated earlier in Chapter II, essentially different in nature. The first is made up of companies that have been active com-

petitors before the combination was made, as in the case of the original Sugar Trust and Whiskey Trust. In these cases the combination was sought for the special purpose of lessening competition, together with the elimination of the competitive wastes. The combination simply took different competitors out of the market and enabled the price of the product to be fixed by the central organization.

In the second kind of combination, the constituent members have often not been competitors in the same line of work before the combination was made, though they each seek a share of the value of the final product. Instead of being competitors in the same line of business, they have been producers of different products at different stages in the same industry. For example, the Federal Steel Company is a combination of several companies that were not competitors. The Minnesota Iron Company owns iron ore property, also the Duluth and Iron Range Railroad Company, which connects its mines with Lake Superior at two points. It owns ore docks and also twenty-two steel lake vessels that can carry a large proportion of its products each year. The Federal Steel Company bought all its stock.

It also bought all of the stock of the Lorain Steel Company, which manufactures chiefly steel rails for street railways, although some steel billets; it bought all the stock of the Johnson Company, which is engaged chiefly in manufacturing frog switches and crossings for street railroads, as well as electric motors. Another company, all the stock of which it purchased, is the Illinois Steel Company with several plants, which produce pig iron, steel rails, steel billets, steel plates, etc. This company is also the owner of the stock of the Chicago, Lake Shore and Eastern Railway, which connect its plants in the neighborhood of Chicago, and also gives these plants an outlet to the general market over all of the railroads in the country. It also owns large tracts of coal property on which it manufactures coke used in its plants. From this statement it will be seen that the Federal Steel Company by its formation lessened only to a very slight extent, if at all, the competition in the same lines which had existed before. Its purpose was different. Through the combination the mines are furnished with a sure customer, provided they need one, for a large part at least of their output; while, on the other hand,

the Illinois Steel Company, in its manufacture of steel rails, billets, etc., is assured of a steady supply of its ore for the carrying on of its manufacture. In this way contracts can be taken for a long period of time in advance with perfect certainty of their being carried out on time without any excessive losses that might otherwise come from possible changes in the price of ore. Before the organization, of course, each of these separate companies tried to get the largest share possible of the value of the finished product. Now, while the contest may be the same, the motive has been weakened. The profit which the mine foregoes, may be made by the rolling mill or the fleet of transports. It is, of course, true that the business of each one of these separate companies is managed independently; it is still further true that at times the mining company can sell its ore to better advantage to outside manufacturers than to the other constituent members of the Federal Steel Company, they in turn buying their ore to better advantage from some other mine. But, while the work can be ordinarily and is ordinarily carried on independently, and while at times each of the

separate constituent companies deals largely with outsiders, this perfect union in management enables them to be secure at all times as regards the supply of raw material on the one hand, and a proper sale of the raw product on the other, advantages that can by no means be lost sight of.

Some other companies without any formal organization are managed in largely the same way. For example, the American Tin Plate Company, the National Steel Company, and the American Steel Hoop Company, while entirely independent in their organization, have nevertheless to a considerable extent the same men as large stockholders and as directors. While each one can thus work independently, and while legally each one does so work, there is to a considerable extent the same knowledge on the part of each of the business of the other and the same harmonious working that is found among the constituent companies of the Federal Steel Company, of the Distilling Company of America, and of others that have united through the holding of the stock of the constituent companies by one parent company.

Whatever the form of organization, however,

the one essential requirement is efficiency and an opportunity for saving any of the waste that might come if the different corporations or companies were working independently. It is desirable, of course, from the one point of view that this efficiency be used to serve the public in the way of better goods and lower prices. On the other hand, from the standpoint of the combination itself, the efficiency points simply to the cheaper cost of production and the more efficient control of the process of manufacture, whereas the service to the public in the way of cheaper prices is of course a secondary consideration, and is sometimes even contrary to the wish of the corporation.

The form of organization will naturally determine to a considerable extent the method of management of one of these combinations. Ordinarily there is no difference in appearance between the management of a large corporation called a Trust and any ordinary corporation. Any student of corporation law, upon reading the charter and by-laws, can readily tell from the power that is put into the hands of the directors whether they are in a position to manage the corporation in their own interests as against

those of the stockholders, or whether the stockholders are given power of control.

If one may judge from the fluctuations of the shares of several of these larger corporations on the Stock Exchange, it would seem that the power at any rate is given to the directors so to manipulate the stock that they as individuals, by buying and selling at suitable times, may make large individual profits at the expense of the majority of the stockholders—a most dangerous power.

In the first place, the stockholders in many cases are prevented by the by-laws from having access to the books of the corporations, except under the most extreme circumstances. The directors make no reports to the stockholders that give them any clear insight into the methods of management of the business, and the public who may be intending to invest in the stock have no means of judging what the financial condition of the corporation is. When the charter and by-laws thus enable a board of directors to conceal absolutely from the stockholders the condition of the business, one may at least be justified in the opinion that if the affairs of the corporation are not managed for

speculative purposes by the directors, it is because they are men above temptation of that kind.

In some instances, also, the Boards of Directors are so classified and the terms of their office so arranged that those who are first put into control as directors by the organizers of the company may keep that control for a period of years without any possibility of being ousted by the shareholders, unless their methods of management are so palpably fraudulent that the courts will order their removal. Under those circumstances the directors and officers are in a position of strong temptation to manage business in their own interests with comparatively little danger of being found out for a considerable length of time. Here, again, an investor who sees in the articles of incorporation and by-laws provisions which deprive him and his fellow shareholders of all effective power over the directors for a period of years, buys the stock knowing his own risk.

It is not intended, of course, to overlook the fact that too great power given to the shareholders, or too close a knowledge of the interior management of a corporation by the share-

holders, may easily result in injury to the interests of the great majority of them. It is not desirable for a corporation to have its competitors know the details of its management. If any shareholder were at liberty to examine the books of the corporation at any time, or if the directors were compelled to give to the shareholders the privilege of examining closely the details of their management, it would be a comparatively easy matter for the manager of a rival company to buy a few shares of stock in order that the lawful and proper secrets of the corporation might become his. It would also be possible for an individual shareholder practically to levy a blackmail upon the corporation, which it will promptly, however unwillingly, pay, in order to prevent proper secrets of management from becoming public property. While one may readily grant that these dangers to the real welfare of a corporation exist if too great power is given to the shareholder, one must not overlook the fact that the other extreme is no less dangerous.

It would be very desirable if more careful study were made of the forms of organization, as shown in the charter and by-laws of corpo-

rations. Intending investors would in many cases by such study be prevented from putting their money into corporations organized evidently for purposes of speculation, or for the special advantage of the directors and officers against the interests of the shareholders.

So, too, if more attention were paid to this feature of corporation organization and management, there would soon be some decided improvements in our corporation laws.

Of course these statements regarding Trusts apply to all large corporations, but the opportunities for speculation against the interests of the shareholders and of the public are so much greater in the case of the very large corporations, which have some monopolistic power, that the offence becomes almost of a different kind.

CHAPTER VIII

PRICES

If in any industrial combination the economies which are made by saving the wastes of competition can be secured, it is evident that, if the managers of the combination wish, it is possible, without the profits being lessened, to put prices of the finished product below former competitive rates; or, on the other hand, to put prices for raw material above those common before. Or again, if, as a result of the combination, there comes an increased output from the demands of the export trade or from an added demand that might come from lowered cost, the price paid for raw material might through either of these influences be raised somewhat. What may be done if a certain degree of monopoly can be held, has already been discussed at considerable length in the chapter on Monopoly. What may be done is, however, but one consideration. It is, perhaps, of more importance at the present date to

show what has been done, in order that we may be better able to judge the present industrial situation, to note possible changes in the future, and to see what measures of legislation, if any, may be needed in order to adapt these combinations to our present industrial conditions. It will, perhaps, be best to give as careful a statistical representation as possible of the prices over a series of years in several lines of industry where the statistics can be gathered, and thus to test the effects of the industrial combinations upon prices. While the effects can thus be shown here upon only a few articles, it is believed that they are sufficiently typical, so that they represent fairly well the actual effects of combination up to date. Similar studies of many other articles show, in the main, the same general results. From a theoretical discussion we can judge, perhaps, somewhat more accurately what the effect is likely to be in the future.*

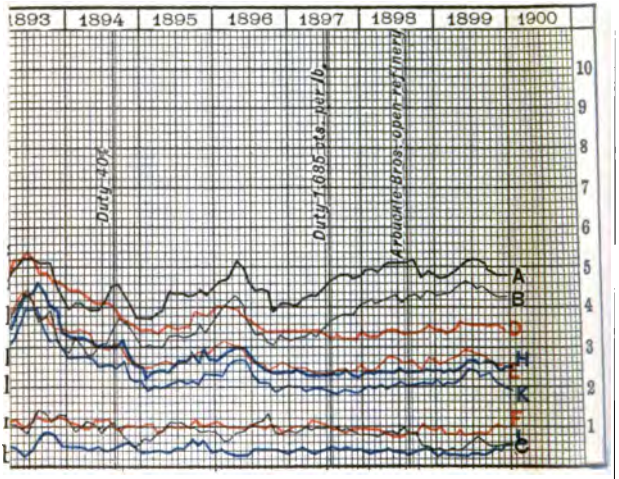
The actual effects of the industrial combinations upon prices form certainly one of the best

* The remainder of this chapter has been reprinted, with some changes and additions, from the chapter written by the author for the United States Industrial Commission, and printed in their Preliminary Report on Trusts, Vol. I., Part I., pp. 39–57.

tests of their usefulness or disadvantage to society. The popular impression seems to be that these combinations very greatly increase prices to the consumers. On the other hand, the Trust managers and their advocates are in the habit of claiming that, owing to economies of management, the Trusts lower prices to consumers, while at the same time they increase the wages of their employés.

It is, of course, comparatively easy by the selection of statistics at certain chosen periods to show either of these results. It has, in consequence, seemed wisest to secure as far as possible average monthly prices of the leading raw materials and finished products of several of the larger combinations for a series of years, and to plat these on charts in such a way that the relations at all times between the two can be most readily seen. Wherever it has been practicable, European prices have been compared with American, in order that the influence of the Trust itself might more clearly be brought out.

The differential or "margin" between the price of the raw materials and that of the finished product should show, other things equal, the cost of manufacture plus the profit. Un-



…ıbes).

German (Hamburg) { **H** = Price of granulated sugar. **K** = Price of raw sugar (German beet roo **L** = Difference between H and K.

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less one is somewhat guarded, however, one is likely to reach false conclusions, if this assumption is made without qualification. In nearly all processes of manufacture there is a considerable element of waste raw material. As the price of the raw material increases, the value of this waste is also correspondingly increased. In consequence, in order that the profits may be the same, the margin between the price of the raw material and that of the finished product should generally increase slightly with the increase in price of the raw material. Again, when the raw material has to be held in large quantities, so that it involves the investment of considerable capital, it can be readily seen that the interest charge for carrying this raw material is not a little increased as the price of the raw material rises. This, of course, is a factor of less importance than the other, but nevertheless is worthy of consideration.

Sugar *

The lines on the chart represent standard raw and refined sugars in the United States,

* The prices from which the chart has been made were taken from Willett and Gray's Statistical Sugar Trade

England, and Germany. For America raw sugar is represented by 96° centrifugal, and refined by granulated. The English raw sugar, Java Afloat, corresponds closely with the American 96° centrifugal; but the English refined sugar, Tate's Cubes, is a special grade, which normally brings somewhat more than the regular price of granulated sugar—at times, probably, nearly half a cent more. The consequence is that we should expect the margin between the raw and refined in England to be somewhat greater than the American margin between 96° centrifugal and granulated.

The German sugars shown, both raw and refined, are of somewhat poorer quality than the American sugars. The margin between them, other things equal, would be, perhaps, not quite so great as that between the American raw and refined. The fact that it is so much less is due in part, doubtless, to the German

Journal. In the Journal, English and German prices were given in shillings and pence per hundredweight of 112 pounds. They have been reduced to cents per pound in order that comparisons might be more readily made, and the chart more easily platted. The convenient rule for reduction given in the Journal of January 4, 1900, from which the prices of foreign sugars are taken, has been followed.

bounty on the exportation of refined sugar. It is also probable, if one may accept the opinion of sugar experts, that the cost of refining in Germany is somewhat less than here, and that under normal conditions the Germans are satisfied with a somewhat smaller profit.

The effect of the sugar combination upon prices of sugar can perhaps be most readily seen from the course of line C, which represents the perpendicular distance between line B, representing 96° centrifugal sugar, and line A, representing granulated sugar, both of them wholesale prices in the New York markets. The distance, then, of C from the bottom of the chart represents the cost of refining, including selling cost, plus the profits. The line F in the same way represents the English cost of refining, plus the profits, it being remembered, however, that the English refined sugar is of a somewhat higher grade than the American granulated. The line F, it will be noted, ran somewhat above one cent a pound, perhaps on an average between a cent and a quarter and a cent and a half, from 1880 to 1887, the time of the formation of the Sugar Trust in the United States. There seemed to be no lower-

ing in this English margin during the years 1883 to 1887. From the beginning of 1888 on to 1894 this line seems to have lowered slightly, but, on the whole, to have remained about the same. From 1894 to date there seems to have been again another lowering, the line representing, on the whole, since that date something less than one cent a pound.

On the other hand, line C shows that during the years from 1883 to 1887 there had been a very decided lowering in this margin in the United States, owing, of course, to vigorous competition among the independent refiners. From the testimony given by witnesses before the Industrial Commission, this competition was so very destructive in its nature that a large percentage of the American refiners, as has been said—eighteen out of about forty—had failed.

In 1887 the Trust was formed. The margin was immediately raised more than half a cent a pound, at times even fully one cent a pound. During the two years 1888 and 1889, when one takes into account the lessened cost of manufacture that came from the organization of the combination, one may fairly judge that the Trust made enormous profits.

The margin fell again in the latter part of 1889. This was owing to the fact that large competing refineries, especially those built by Claus Spreckels at Philadelphia, had entered the field. For rather more than two years, while this vigorous competition continued, the margin fell back to a point substantially as low as had existed before the formation of the Trust. In February, 1892, the Trust bought up the competing refineries, and the margin was at once put back to the non-competitive height. From the years 1892 to 1898 this margin remained, relatively speaking, high, with, as will be noted, a slight gradual lessening, owing presumably to the improvements in refining and the consequent lessened cost, with possibly a growing realization of the danger of inducing new capital to enter the business. Throughout all these years, with the exception of the time when there existed vigorous competition between the Trust and the Spreckels refineries, it will be noted that, on the whole, there was a close correspondence between the English margin and the American, the changes in the duty upon sugars having apparently only a slight temporary effect upon this margin, although the removal of the duty on raw

sugar by the McKinley tariff affected very decidedly the price of sugar to consumers.

In the latter part of 1898 vigorous competition against the American Sugar Refining Company (the reorganized Trust) began on the part of Arbuckle Brothers, Claus Doscher, and others. Prices were immediately cut so that the margin between raw and refined sugar has fallen again very decidedly. Instead of standing from 75 cents to $1 per hundred pounds, as had been the case most of the time during the three or four years preceding, it has remained during the last year at but little above 50 cents, and at times has been even below that, with at present, in June, 1900, a considerable increase.

This study of the chart, then, especially when we compare the American with the English and German margins, shows clearly this: The sugar combination has, beyond question, had the power of determining for itself, within considerable limits, what the price of sugar should be, low or high, with or without competitors, although when there has been competition it has chosen to cut prices to drive out its rivals rather than to run the risk of letting them gradually take its market on account of its high prices. Dur-

ing about nine of the twelve years which have passed since the organization of the Trust, the margin between raw and refined sugars has been considerably higher than it was for three years before the Trust was organized, and than it has been during the three years when there has been vigorous competition.

The combination forced the fighting so severely against Mr. Spreckels as a competitor that he was apparently glad to sell out after about two years. The present contest between the Trust and its opponents has continued for more than a year and a half, and at present shows no sign of ending but this, that, with perhaps the exception of Arbuckle Brothers, the opposition refineries have been run at far below their full capacity, have stopped entirely at times, and presumably have been making practically no profits, and that now they are making a combination among themselves.

The chart seems to show also that the Trust has had very little, if any, effect toward steadying prices. The fluctuations, both in the price of sugar and in the margin, seem to be fully as great since the combination was formed as before, and to be rather greater, on the whole,

than the fluctuations in the English or the German market.

The assertion often made that the price of sugar would have been higher if it had not been for the formation of the Trust seems to have a partial, but only a partial, justification in the chart. The chart does make it perfectly clear that during periods of the most vigorous competition the sugar refiners were doing their work on a very low margin. The large number of refineries that went into bankruptcy before the formation of the Trust seems to show clearly that the margin was ruinously low. While it is probably for the economic advantage of the country that the weakest competitors be forced out of business from time to time, it can hardly be considered for the benefit of the country that competitors of substantially equal strength carry competition so far that all are running at a loss, and that a large percentage of them go into bankruptcy. When competition is so fierce, the inevitable result of its continuance would be that, as Mr. Post, a rival of the Trust, says, the few who survive would be able, owing to the lessened supply, to put prices at considerably above usual competitive rates, and would be en-

couraged to do so, because they could not well supply the demand. Unrestricted competition, then, among powerful rivals in an industry of this character would thus lead, it would seem, to very great fluctuations in prices from those abnormally, not to say ruinously, low to those abnormally high.

One ought not to fail to note that in industries of this class, under present methods of doing business, one can scarcely with propriety speak of a competitive rate that is in any sense normally uniform. The "normal price" of economists has been based upon cost of production under a system of competition among small capitalists. From what has just been shown, it appears that in an industry like that of sugar-refining competition will first force all to sell at a rate that is below cost for many, perhaps all, refiners, until many fail. Then the short supply for a period of years, if no combination is made, will enable all those surviving to reap large profits from high prices, till new capital, after months or years, is tempted into the business. Then prices fall again below cost. It would seem that in such an industry the real rate under competition, if the almost inevitable combination were not made, would be first below cost, then

far above it, then below again, and thus continuously in cycles. There is no normal level of competitive price based on cost of production.

While there does seem, from this thought, to be this partial justification for the claim that the Trust may have lowered the price of sugar on the whole below what it would have been for a time had the combination never been formed, the relative steadiness of the English margin at a point which, in the main, seems lower than ours, considering the higher grade of English refined sugar, as well as the exceedingly high margin found frequently in the United States since the organization of the Trust and the large profits of the American Sugar Refining Company, would seem to show that the price of sugar in this country has probably, on the whole, been rather higher than it would have been had most refiners been willing to take but a small profit above the cost of refining, and certainly considerably higher than it would have been under conditions of competition such as have existed during the last two years.

A still further fact which leads to the same conclusion is that Mr. Havemeyer, the president of the American Sugar Refining Company, seems

unwilling to concede that the cost of refining is as low as his competitors assert. Mr. Jarvie, of Arbuckle Bros., says that with a margin of from 50 to 60 cents sugar can be refined without loss. Mr. Doscher agrees, saying that it can be done without loss when the margin is 50. Mr. Post places the margin somewhat higher, but concedes that a large establishment like the Trust would have an advantage of from 3 to 5 cents a hundred pounds in refining. Mr. Havemeyer, on the other hand, puts 50 cents a hundred as the bare cost of refining, and declares that 24 cents more at least must be added on account of the waste in raising sugar from 96° to 100°, the polariscope test of the refined, thus making the margin necessary for profit some 75 cents a hundred, instead of from 50 to 60. Apparently he thinks it wise to reckon in some interest on investment with the cost, which the other witnesses seem not to have done. He admits that "no great damage is done" when the margin is at 75 cents. There is a profit, if all is in good working order.

Another point which is to be considered, although it is one which is scarcely noticeable, or noticeable only in certain special cases on the

chart, is this, that in order to secure the same profits the margin between raw and refined sugars should be slightly greater when the price of raw sugar is high, inasmuch as the loss of weight is a more expensive waste. If, for example, with raw sugar at $3 a hundred there were a 7 per cent. waste, let us say, in refining, this loss would amount to 21 cents a hundred; while if, with the same 7 per cent. waste, the price of raw sugar were $4 a hundred, the waste would amount to 28 cents. We see, therefore, that in order to make the same profit the margin should be 7 cents a hundred more in the second case than in the first. The witnesses speak of unusually vigorous competition and a consequent low margin each year from December to March, while the Louisiana crop is being refined and marketed, but this does not appear with any regularity.

On the whole, the chart seems to make it perfectly evident that the sugar combination has raised the price of refined sugar beyond the rates in vogue during the period of active competition before the formation of the Sugar Trust and the two competitive periods during its existence. We can perhaps hardly judge so accurately as to

what might have happened had the combination not been formed, but the price has probably been raised beyond what it would have been. There is doubtless some force in the argument of Mr. Post to the contrary, and we must concede that in industries of this type we can hardly speak with accuracy of a "normal competitive rate," based on cost of production or on the prevailing rate of interest, which we can use as a standard of measurement.

The chart does not give us any information regarding the effect of the sugar combination upon the price of raw sugar. That seems to follow in the main, as would be expected, the fluctuations in the prices of raw sugar in both England and Germany, with the decided differences that we should expect at times from the effect of our tariff. It does, however, show some remarkable fluctuations. The advance in prices in 1888 and 1889 was due principally to a shortage in European beet crops and in the Cuban cane crop, which led to wild speculation in Europe. It is probable, as several of the witnesses testified, that, owing to its peculiar strength as a buyer of raw sugar, the Trust is able to depress the price slightly, perhaps one-

sixteenth of a cent, but this is not enough t
clearly shown on the chart. It is probable,
and this, in fact, seems to appear, that wh
ever there comes a decided drop in the pric
raw sugar the Trust has been able to d
slightly, though only for a brief time, the
responding drop in the price of refined; wh
on the other hand, increase in the price of
is attended almost immediately by an increas
the price of refined, the Trust thus being
to hold itself for its own advantage, to a sl
degree, independent of market conditions.

Whiskey *

A study of the line showing the difference
tween the price of the raw material, corn,

* The figures upon which this chart is based are t
found on pp. 815–817 of the Report of the United St
Industrial Commission, Vol. I., Part II. The prices
spirits were derived from the reports of the Peoria Bo
of Trade, and are Trust prices at that point. The p
of corn, derived from the same source, is No. 2 corn
Chicago, which is at present used by the Distilling Co
pany of America as the basis in fixing its price for spir
For the last few months the prices of spirits have be
furnished by the Distilling Company of America, and t
price of corn by the Secretary of the Chicago Board
Trade.

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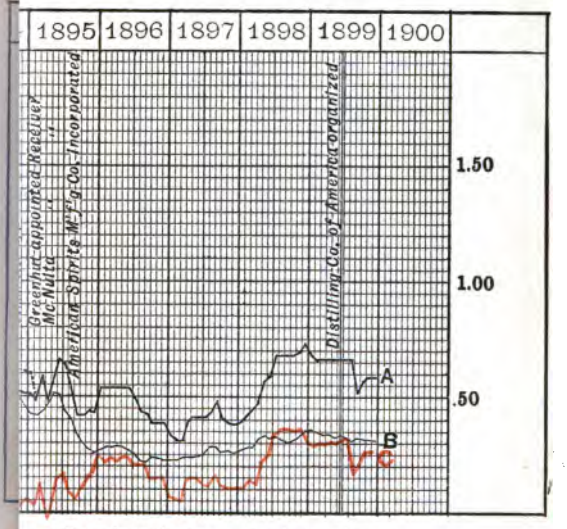


er gallon, less the tax and rebates, by the

bushel, and the price, less the revenue tax, of the amount of the finished product, spirits, derived from one bushel of corn, shows nothing else so clearly as the very great fluctuations in this margin. The price of corn, of course, owing to variations of crops and to various factors which determine demand, fluctuates greatly from season to season. At present—as was the case at one time earlier, while the Distilling and Cattle Feeding Company was in the hands of a receiver, General McNulta—the price of spirits is based directly upon that of corn, so that the fluctuations correspond in the main ; but for most of the period represented on the chart this is not true.

During the years 1881 to 1887 various pools were formed among distillers, most of which lasted less than a year. The chart shows clearly that during the existence of each pool the prices of alcohol were kept up and the profits were correspondingly large. When, however, the pool suspended, profits fell to a minimum, the margins doubtless being at times below the cost of distilling. At the formation of the Trust in 1887 prices were cut for a time in order to force competitors into the organization, but within a

few months prices were raised and profits became very large. These profits stimulating competition, however, it became necessary again at the beginning of 1889 to cut prices very decidedly in order to force rivals into the combination. For some two or three years after this prices and profits were kept, on the whole, fairly high, but in 1892 and 1893 a period of speculation led to very startling sudden changes in prices and corresponding changes in profits so far as sales were actually made. It was, of course, true that at many times the sales were very small.

While the chart attempts to show the prices without the rebates which were paid to wholesalers during the years 1890 to 1895, as well as the quoted market prices, one cannot be entirely sure of the accuracy of the chart in this regard, inasmuch as it has been impossible to secure with absolute certainty the dates of the various rebate changes. The chart is, however, not far out of the way, if at all.

Since the formation of the American Spirits Manufacturing Company in 1895, while the business has been somewhat more stable than during the last years of the Distilling and Cattle

Feeding Company, at no time until very lately has the combination had complete enough control of the market to be sure of steady prices and corresponding profits. It will be noticed, however, that for the last year and a half conditions have, on the whole, been much more favorable for the combination than before, it having more nearly secured the control of the market.

The chart as a whole would seem to show that the whiskey combinations have been able to hold prices and profits high only for short periods, inasmuch as they have almost invariably attempted to overreach and secure too high profits. They may hold prices stable for a few months, but when the changes do come they are much more radical and much more disturbing to the trade than would be the changes—relatively speaking slight—which would come under the régime of free competition.

According to the testimony of the President of the Distilling Company of America and one of its directors, the combination has finally adopted the policy of comparatively *low* profits, but invariably secure ones. It remains to be seen whether for the next two or three years it will

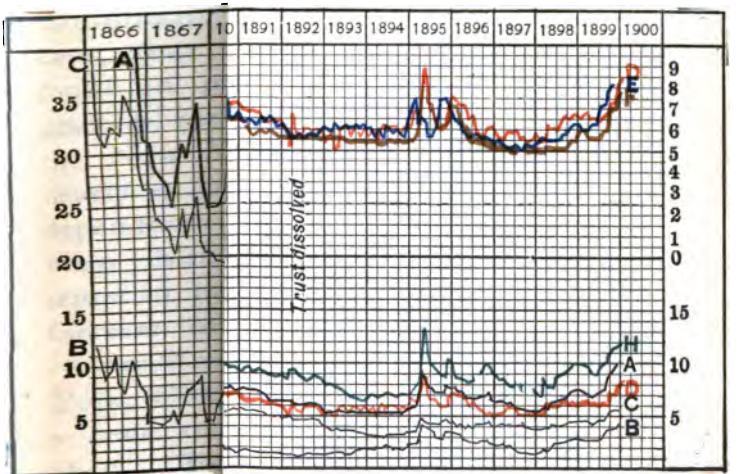
be able to carry out this policy, which, from the point of view of the combination, if it is managed on business principles and not for the purpose of speculation, is a wise one.

Petroleum *

In considering the chart showing the prices of crude and refined petroleum, attention should be called to the fact that figures for crude oil are given in bulk per gallon, the package not being included in the price; whereas those for refined

* The prices for crude and refined oil for export have been taken from the Derrick's Handbook on Petroleum, with the exception of those for the last few months, which have been furnished by the Standard Oil Company. The prices are in cents per gallon, including the cost of the barrel in the case of refined oils, excluding it in the case of crude oil. The prices of standard white illuminating oils at New York, Chicago, and Cincinnati have been furnished by the Standard Oil Company. Prices were given in bulk, and the amount of 2½ cents per gallon was added for the cost of the barrel. This cost of the barrel would of course vary slightly; but the rule of 2½ cents per gallon is one that is laid down in the Handbook of Petroleum, and is probably a fair general average. The prices of export oils at Bremen were taken from the Handbook for the earlier period, and for the last few months have been furnished by the Standard Oil Company. Figures are found in detail with margin reckoned in Report of Industrial Commission, Vol. I., p. 48.

OIL



C. TORRANCE

minating oils in barrels at New York.
" " " " Chicago.
" " " " Cincinnati.
" " " " Bremen.

oil are given per gallon, including the cost of the barrel. This is in accordance with the usual system of quoting these prices.

It will be observed that the price of export oil at Bremen, H, is regularly above the price, not merely of that same quality of oil in this country, but even of the higher grade standard white illuminating oil. It frequently happens, however, that the high grade illuminating oil is lower in price in New York than the poorer grade oil for export. For brief times, in 1893–4, the New York price for illuminating oil stood nearly as high as the Bremen price. The independents claim that the very low price in Germany during those years resulted from an attempt to prevent their getting a foothold in the German market.

It will be noted that the prices of oils in New York, Chicago, and Cincinnati are charted on a scale twice as great as that of the main chart. This has been done in order to show the difference in prices between the three different markets under consideration. On the whole, the price of oil in New York stands somewhat above that in either of the other two cities, New York being somewhat further removed from the

oil fields; while the prices at Cincinnati are lowest. Although there is a general correspondence between the figures in these different markets, there are, nevertheless, special fluctuations in each market, which seem to be largely independent of fluctuations in the others.

The rapid and decisive fall in the price of refined oil in New York in 1896, it is claimed, was due to the competition of the Pure Oil Company. In March it put some wagons in New York selling oil. Prices dropped very rapidly until, as Mr. Lee, perhaps the leading opponent of the Standard Oil Company, says, they were below cost. Mr. Archbold of the Standard Oil Company makes a somewhat different statement of the figures, and points to the fact that the price of the crude oil was rapidly falling. The chart shows also that prices in both Chicago and Cincinnati fell in like proportion, if not even more rapidly, at the same time. The Pure Oil Company began exporting oil to Germany in October, 1896, with apparently somewhat better facilities than the independents had had before, which may possibly account in part for the rather rapid fall of oil in Germany at about that time, although crude oil was also falling.

If we take the chart as a whole, and note the margin between the price of crude and refined petroleum represented by the line C, we shall see that this margin lowered very much more rapidly during the early years of the industry than of late. This, of course, is to be expected, as methods of production are much more rapidly improved during the early years of an industry than later.

There has been more or less of an association among the oil refiners who have made the Standard Oil Company since 1872. This did not, however, in the earlier years seem materially to affect this margin, which kept steadily decreasing until 1879 or 1880. The Standard Oil Trust was formed in 1882. From that time on, for a period of eight or nine years, it is noticeable that there is only a slight decrease in the margin. From 1891 until 1898 the margin seems to have been steadily nearly or quite a cent lower than for the period preceding. But the period of the smallest margin seems to have been in the years 1893 and 1894.

Of late years, according to the testimony of several refiners, there has been a very decided increase in the value of the by-products, the profits from the by-products being apparently equal to

those from illuminating oil. It seems to be generally conceded that the rivals of the Standard Oil Company do not make so complete use of the by-products as does that company. With its enormous capital it has a decided advantage in that regard, and shows how a combination with large capital may save a waste of competition, or of production on a small scale. Under these circumstances it was perhaps to be expected that the price of refined petroleum, as compared with that of crude, would have lessened still more than has been the case.

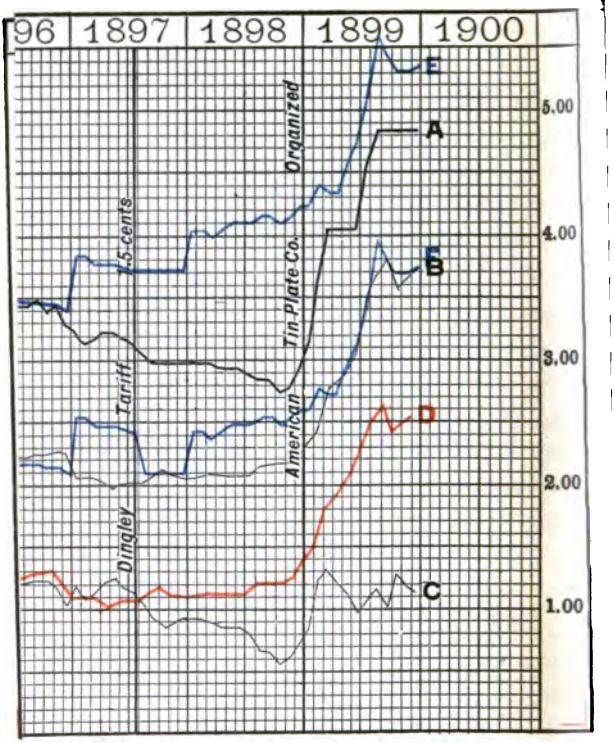
During the last two years there has been a decided increase, not merely in the price of refined petroleum, but also in the margin between crude and refined. For the last year this higher margin is to be partly explained by the added cost of refining, coming from the increase in cost of supplies. For example, refineries are constructed largely of iron, and deterioration in them is rapid. The price of iron has increased considerably more than 100 per cent. during this period. It is also true that within the last year there has been an increase amounting at times to as much as half a cent per gallon in the cost of packages in

which refined oil is carried, and the price of acids has also increased. These facts would explain, in part at least, the increase in margin, so that the profits have not been so much greater than they were before, as might be inferred. The general testimony of the independent refiners, however, seems to show that conditions have been somewhat easier for them during the last year or two than earlier, and the large dividends of the Standard Oil Company of over 30 per cent. for each of the last three years would also seem to indicate that profits have increased, and that this has been a chief factor in the increase of the margin.

The independent oil producers have said much about the arbitrary acts of the Standard in fixing the prices of crude oil. The charge of arbitrary action is conceded by the Standard to be true in special cases. That organization has at times in special localities raised the price of crude oil till it has ruined a rival pipe line, which was also a buyer, and then, on the absorption of the line, has lowered it again to the great disadvantage of the oil-well owners. At times, too, where it has been almost the sole buyer of crude oil, it has kept prices so low that well owners

were practically compelled to sell out to it; then it has raised the price. Most of these instances have to do with special localities and produce no great effect on the entire market, though they are enough to add decidedly to the profits of the Standard Oil Company.

The greater general changes seem to have been due to the changes in supply brought about by other causes. The discovery of the very productive fourth sand oil wells in Butler County, Pa., only about eighty feet under the third sand levels, led to a great increase in production and the consequent rapid fall in price noted on the chart in 1873 and 1874. Mr. Lee claims that the fall of the two preceding years was brought about by the general demoralization in the business caused by the relations of the railroads with the South Improvement Company and its successors. That year, 1873, was also the panic year. The checking of the flow in the next three years raised the price again. Then the discovery of the famous Bradford fields in 1876 led to the great decline of 1877 and 1878. Likewise the depression from 1891 to 1893, though not so marked, was caused by the discovery of the McDonald field in Allegheny County, Pa., with some of the largest well



rial for one full weight box of tin plate.
duty paid.
exclusive of duty.

ever known in this country. The sudden rise in 1895 seems to have been due to the discovery of the fact that the amount of oil on hand and the production were declining very rapidly as compared with the demand, and to a consequent desire to get stocks ahead. It was thought that some of the refiners had sold ahead far beyond their capacity to supply from any stock which they had on hand, and that the advance in crude oil was largely arbitrary, and intended to overthrow them. At any rate, there was urgent demand on a short supply, and the market was largely speculative for a time. In 1897 another decline is due to the opening of the West Virginia fields, while the present rise is to be ascribed chiefly to another decided check in the output, which is clearly destined to grow worse unless new fields are discovered.

Tin Plate *

The most striking fact which appears in the chart is the very rapid increase in all prices during the year 1899—in steel as well as tin plate

* On this chart the prices of steel billets have been taken from the "Iron Age," which is, perhaps, as trustworthy as any single authority can be.

The causes of the rapid increase in the price of steel, the chief raw material, are, perhaps, many, but, from the standpoint of the manufacturers and for our purposes here, it will be sufficient to say that the enormous increase in the demand for steel of all kinds is, perhaps, to be considered as first and most important. There has been during the past year a decided increase in the demand for steel rails, not merely for the building of new railroads, but also for the relaying of old track with heavier rails, because of the heavier rolling stock now used on the most important roads.

Structural steel for buildings is now used in enormous quantities, whereas for this purpose its use was almost unknown ten years ago. Steel bridges on railroads and elsewhere are rapidly displacing all the wooden bridges. The use of pressed steel for railroad cars is almost entirely new. Chairman Gates of the American Steel

The prices of tin and of tin plate have been furnished by Phelps, Dodge & Co., of New York city, while Mr. Reid, president of the American Tin Plate Company, has himself given, as nearly as was possible, the cost of labor of manufacturing one standard box of tin plate.

These figures may be found in the Preliminary Report of the United States Industrial Commission, Vol. I., pp. 55, 868–9.

and Wire Company is of the opinion that these later uses of steel have increased the demand for that article within the last two or three years by more than the total output of steel for the whole United States fifteen or twenty years ago. It is in all probability due to this enormous demand for new purposes, without as yet a corresponding increase in the facilities for producing an adequate supply, that the great increase in its price has come about. The increased demand for steel, and consequent increased price, has been to a considerable extent reflected in the prices of iron ore and pig iron, in the charges for the transportation of ore, and in the higher wages of labor. This increase in the price of steel, which is the chief raw material in the manufacture of tin plate, of necessity has forced up the price of tin plate.

Tin has increased within the last two years from some $14 a hundred to double that price. Labor also, since July 1, 1899, when the new arrangements were made with the Amalgamated Association of Iron, Steel, and Tin Workers, has increased some 20 per cent. on the average. The line D represents the market value of 105½ lbs. of steel plus that of 2½ lbs. of tin,

i.e.: the value of the raw material in a full-weight box of tin plate. The line B shows the same plus the cost of labor to manufacture one box. The line A represents the price of a full-weight box of the manufactured product. The diagram shows clearly the decided increase in all of these costs.

The distance from the base of the chart of the line C, representing the perpendicular distance between the lines B and A, shows then the cost of manufacture, aside from the labor, which is included in B, plus the profit in manufacturing. It will be noted that from the beginning of 1895 up to the middle of 1897, in spite of one decided drop in the latter part of 1895, this difference between the cost of material and labor and the selling price of the tin plate remained somewhat above $1, say $1.10 to $1.20 a box. During 1897 there was a decline in price with a more decided fall in the margin between the prices of the raw material and the finished product, shown by line C, which, with slight variations, continued downward until October, 1898. Before the organization of the American Tin Plate Company, in December, 1898, there had been, in October, a decided increase in the

price of tin plate, and this increase had been more than proportionate to the increase in the price of the raw material, which had advanced as early as July. It was, of course, known to most of the tin-plate manufacturers that the combination would probably be formed, and presumably the different establishments had already stopped in part the most vigorous competition. This increase in the margin between the cost and selling price continued rapidly until March, 1899. From that time on there has been no further general increase in the margin, although there have been fluctuations.

The very strong demand for tin plate would probably have enabled the manufacturers to increase this margin, even if the combination had not been made; but the union of practically all the manufacturers under one management enabled them to make the best use of the opportunity, and thus the margin was put back to substantially the same position which it had held during the year 1896 and the first part of 1897. Since March, 1899, however, the increase in the price of American tin plate has not, on the whole, been more than the increase in the value of the raw material, plus the increase in labor

cost, facts which were testified to in October by officers of the combination.

The course of events seems to have been this: the price of steel and tin was advancing rapidly, and this advance would naturally tend to lower the margin between the material and the tin plate. For four months, from March to June, 1899, the price of tin plate was not increased, while that of the raw material did increase, and the margin, in consequence, fell. In July and August the price of tin plate was increased very rapidly, so that the margin was put back nearly, but not quite, as high as in March. The continued increase in the prices of the raw material in September lowered the margin, while a temporary decrease in the prices of the raw material in October raised it again. Another increase in the price of the raw material lowered it again in November and December. It will be noted, therefore, that on the whole there has been not a relative increase in the margin, but rather a slight decrease since March, 1899, although the average margin is considerably higher than at any time during the year 1898, and as high as it was during the year 1896 and the early part of 1897.

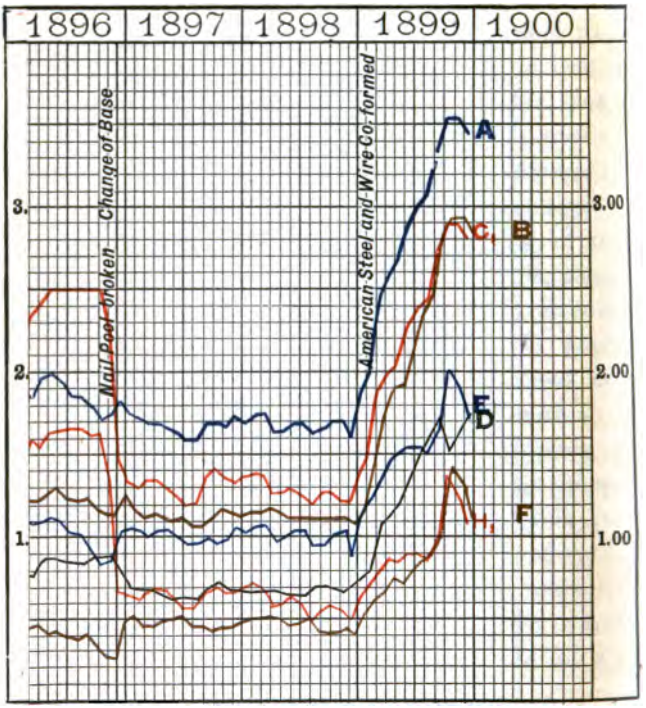
It will be noted here also, as in other cases, that in order to secure the same profit there should be a slightly greater margin when the prices of the raw materials are high than when they are low. It may fairly be considered, therefore, other things equal, that profits since March, 1899, are no higher, but are rather lower, than they were at that time, even though the price of tin plate has very decidedly increased.

The chart seems to show that the combination had power at the beginning to press the advantage that came with combination. While the margin may be at the present time no higher than it was in 1896, it is perhaps fair to assume that the cost of manufacture has been somewhat lessened, and that, in consequence, the profits would be now rather higher than they were before when the margin was the same, if the added price of raw material did not demand an increase in the margin large enough to offset the decrease in cost of manufacture.

The line E represents the price of imported coke tin plate per full-weight box laid down at New York, duty paid. The line F shows the same thing, exclusive of duty. The distance,

then, between these two lines represents the duty and the average rate of freight from the Welsh port to New York. The prices are the cost of importation to the jobbers without profit. The McKinley tariff of 2.2 cents per pound took the place of the preceding tariff of one cent a pound, July 1, 1891. It is noticeable, however, that, anticipating the change, the price of tin plate had advanced nearly a year before, so that when the act takes effect the duty appears as a drop in line F. The lowering of the duty to 1.2 cents per pound, August 28, 1894, is shown clearly by the drop in line E from September to October. The drop in price, however, did not come, so that it shows decidedly in monthly prices, until the month after the duty was removed, a fact which appears in the sudden rise and fall of line F. The change from 1.2 cents to 1.5 cents per pound in the Dingley law, taking effect July 24, 1897, it will be noted, was also anticipated some six months in the increased price, as shown in line E and the apparent drop in line F when the act legally took effect.

WIRE



tween A and D.
tween B and D.
tween C and D.

*Steel and Wire**

In this chart, also, the most noticeable fact is the very rapid increase in all prices during the year 1899. This increase in prices is to be chiefly ascribed to the enormous demand both at home and abroad for steel of all kinds, as was explained in connection with the chart showing prices of tin plate.

If we note the line H, showing the margin between the price per hundred pounds of steel billets D, the raw material, and that of wire nails C, the finished product, we shall note that there was a steady decline in this margin from the year 1890 to 1895, in the early part of which the lowest point was touched. During the latter part of 1895, and until nearly the close of 1896, there was a very decided rise, not merely

* The prices for the chart showing the crude and finished iron and steel were furnished by the editor of the "Iron Age," at the request of Mr. Gates, chairman of the American Steel and Wire Company. Prices of steel billets are Pittsburg prices; those of barb wire are those at mill; those of smooth wire and nails are New York prices. In this chart steel billets have been taken as the raw material: all of the other articles may be considered finished products. [Report of Industrial Commission, Vol. I., pp. 55, 56.]

in the price of wire nails, but also in the margin. This great increase in the margin was due chiefly to the influence of the wire-nail pool, which, during that period, secured substantial control of the market for a time, as is explained in detail in the chapter on Combination and Monopoly, p. 62. The sudden fall in the latter part of 1896 came at the time of the breaking of the wire-nail pool. It is also true that at about the same time there was a change of base for the fixing of the market prices of wire nails, but this change in the base did not modify materially the margin as it appears in the chart. It will be noticed, however, that after the break in the wire-nail pool the margin during the years 1897 and 1898 still remained considerably higher than it had been for three years before the formation of the pool, with, however, a steady though slight decline.

The marked increase in the price of steel billets began in November, 1898; the increase in the price of wire nails followed in the succeeding month, and both have increased very rapidly during most of the time since. The American Steel and Wire Company, which controls from 65 to 95 per cent. of the output of wire nails,

was formed January, 1899. In addition to the increase in the price of steel billets, there has also been a decided increase in the wages of the laborers engaged in the manufacture of wire and wire nails.

The increase in the wages of the workingmen is not shown in the chart, but from testimony given, the increase in wages among the wire and nail workers has been greater than that among the workers engaged in the manufacture of steel billets, so that there would normally be, on that account, some increase in the margin.

Another reason for an increase in the margin besides that of an increased profit is this: There is always a considerable waste in turning the raw material, steel billets, into wire or wire nails. If, for example, this loss were 5 per cent. in the case of steel valued at $15 a ton the loss would be 75 cents, whereas if steel were $30 a ton the loss would be $1.50. Steel has more than doubled in price; in consequence, with the same profit, the margin should have increased somewhat.

On the whole, however, it seems, both from the chart and from outside testimony, that the margin, as represented by the line H, indicates

also quite a decided increase in the profits. It will be noted that in the last two months of the year 1899 there was a decided falling off in this margin, showing that just at that time, at any rate, there was a check in the profits, the finished product having lost a little in price, while steel billets had gained. In October the fall in price of billets had increased profits. The presumption is here, as in the case of tin plate, that there would have been without any combination a decided increase, not merely in the price of the finished product, but also in the margin between the crude and the finished product, on account of the enormous demand. The testimony seems to be uniform on this point, that none of the manufacturers have been able to meet the demand; but in this case also it seems certain that the combination was able to take advantage of the opportunity better than individual manufacturers could have done.

Another factor needs to be taken into account in the consideration of the chart. The figures represented are those furnished by the "Iron Age." It is probable that there are no other figures in this country that represent more nearly

actual market conditions. At the same time each individual manufacturer makes his sales independently, and these sales are largely made by contracts extending over a period of some months, sometimes even over a period of one or two years. In consequence of that fact, the majority of the manufacturers of steel may be selling their output on a contract price fixed six months before, while the few manufacturers who are making late sales may be obtaining a price 50 per cent. higher. As a matter of fact, the quoted market prices during the first half of the year 1899 were probably considerably higher than the prices actually realized by the manufacturers. On the other hand, it is also probable that the prices at the close of the year 1899 represent much more nearly, in the case of both the crude and finished product, the real prices secured by the manufacturers. While these different circumstances need to be taken into consideration, it is, nevertheless, doubtless true that the chart represents fairly well the changing conditions of business during the period covered.

Since the American Steel and Wire Company was formed, January, 1899, the margins

between the crude steel and all the finished products seem to have followed substantially the same course, the relations being especially close during the later months. The price of smooth wire did not, however, follow that of wire nails at the time of the wire-nail pool in 1895–96.

Through ownership of patents the American Steel and Wire Company has a legal monopoly in barb wire, so that we should expect a wide margin between A and D, and possibly an increasing one from the combination of patents. The line E shows this increase, though it is not much more rapid than that shown by the lines H, representing the margin for wire nails, and F, representing that for smooth wire. On the whole, though, the great increase in the price of all these finished products is due chiefly to the increase in that of the raw material. The combination, however, seems to have enabled its managers to have made the best use of its opportunities, for margins as well as prices of products increased rapidly from the date of combination.

CHAPTER IX

THE TRUSTS AND WAGES

If the statements made in the preceding chapters regarding the savings of the wastes of competition are true, it is evident that industrial combinations, through these savings, create a fund from which the wages of laborers could be raised, provided it seemed wise to the managers to raise wages instead of increasing their own profits or lowering prices, or provided the laborers were able to enforce a demand upon their employers for higher wages.

Experience also seems to show that, when Trusts are first formed at any rate, the wages of their employees, in a good many cases, have been raised, although later at times men have been apparently thrown out of employment arbitrarily by the sudden closing of plants. When the Whiskey Trust was first organized in 1887, the wages of several classes of employees were comparatively soon raised. Mr. Greenhut, the president of the Trust, in his testimony before

the Committee of Manufacturers of Congress, testified to this effect.* He expressed the opinion that it was but just to give to the employees part of the benefits which were to come from the new form of organization. He stated further in conversation that public opinion was strongly directed against the Trusts on the whole, and that it was perhaps wise to show that the managers of these organizations did not intend to conduct them selfishly for their own benefit solely, but that they wished to distribute fairly among those engaged in production the advantages which came from them.

It is also in evidence that the employees of the American Sugar Refining Company have had their wages increased somewhat, although as their labor is largely unskilled the increase has not been at all great.

According to testimony from both the managers of the Standard Oil Company and from its opponents, that company has been in the habit of paying to all its employees regular standard wages, and in many cases of paying to

* 50th Congress, Second Session, H. R. No. 4,165, pp. 66, 67.

those who showed exceptional diligence or skill in their work very high wages. It is certainly true that they often keep their employees for a series of years, and that in the case of superintendents or managers or those acquiring special skill the ablest men are usually chosen, and the wages or salaries paid are high. Recently that company is reported in the newspapers to have increased wages voluntarily by 10 per cent. One should note that dividends this year have already been over 40 per cent.

Within the last two or three years the new combinations in the iron and steel and tin plate industries particularly have all of them increased the rates of wages, but some of them have also closed plants without warning. The president of the Tin Plate Company testified that the average increase in wages in that industry had probably been 15 per cent. The American Steel and Wire Company had increased its wages in many cases as much as 40 per cent., and in the other related industries the wages had been increased all along the line. It is, however, just to the managers themselves to state that they did not ascribe this increase entirely, if at all, to the formation of the Trust.

They say rather that it is due to the prosperous condition of the business, to the facts that, owing to the heavy demand, prices have been high, and that the employees have demanded higher wages. It seems to them wiser to make arrangements with their employees for an increase of wages than to have trouble with them, especially in so prosperous times. In consequence terms were made, though, in some instances at least, the demands of the working men were not fully granted, the increase being rather a compromise than a surrender. Some of the employers said distinctly that these increases in wages had not been given excepting as the result of demands on the part of the working men themselves; that the combinations made no pretences toward generosity.

It is probably true that in most cases the relations between the combinations and their employees have been and will remain substantially the same as those between the officers of any large corporation and their working men. In individual instances wages may be increased without special demands being made, but that will probably rarely be the case.

As the combination has secured additional

power in many instances over the producers of raw material, it is fair to ask whether this power will not extend also over the working men, so that in the event of a disinclination to meet their demands for higher wages or an inclination to lower their actual wages, the combination would not have more power in carrying out its wishes than would competing corporations. There seems to be little doubt that, speaking generally, other things being equal, this would be the case. If the combination is substantially the only employer of labor in its special line of industry, men trained in that line of work and untrained in others would find practically only the one employer to work for. This would to a considerable extent put them in the power of that employer in the same way that the consumer is to a considerable extent within the power of the combination which controls 90 per cent. or upwards of the output of any industry of which he must buy the product.

A better means of judging the situation will be found if we consider the actual and possible attitude of the combinations toward trade unions. So far as can be gathered from information as yet accessible, while there are exceptions, nearly

all of the combinations have assumed no hostile attitude toward trade unions, but have rather dealt with them in accordance with the wishes of their managers. Chairman Gates of the American Steel and Wire Company insists positively that his organization has not recognized trade unions and will not recognize them. It will deal with its employees as individuals and not with representatives of the union. On the other hand, nearly all of the other iron and steel combinations treat willingly and readily with the representatives of organized labor. This has been true of the American Tin Plate Company, of the National Steel Company, of the American Steel Hoop Company, of the Federal Steel Company, and perhaps of others, there being apparently on the part of the managers of all of these companies no hostility whatever to labor organizations, but a perfect readiness to meet them and to deal with them as do most smaller corporations or individual employers.

In case of a contest arising between the trade unions and one of the greater combinations, it seems evident that, unless the unions have greater power than is usual, the combination, having under its management a number of different

manufacturing plants, perhaps from twenty to forty, will have a decided advantage over the individual corporation with only one or two plants. If a strike were threatened in one of the plants of the combination, it could, with comparatively little difficulty, transfer its orders to its other establishments and close the one involved without a loss which would in any degree approximate the proportionate loss of a single corporation closing its one plant in case of a strike. During the last year, this threat is said to have been made in the case of the smelters' strike in Colorado. The strikers were told that if they persisted in their demands the organization would close the establishment in which the strike was threatened and transfer the orders to other plants.

When trade is dull, too, the combination in like manner is likely, rather ruthlessly it seems at times, to close part of its plants with practically no warning. Individual employers with only one plant are likely to hesitate somewhat longer. The effect on the laboring class as a whole of a checking of production in many independent plants is probably as great as in the effect of closing entirely one or two plants by a

Trust. It does not attract so much attention.

If the trade unions were to extend their membership until the one union or federation of unions had in its membership practically all of the workers in the country in one line of industry, the situation would be entirely changed. Under those circumstances a strike in one establishment would be immediately followed, if need arose, by a strike in all of the establishments of the combination, so that not merely would the work stop in the one place, but in all, and the effect upon the employer would be as great, or even to a considerable extent greater, than in the case of a strike against a single corporation which possesses but one manufacturing plant.

Many of the leaders of the trade unions, such as Samuel Gompers, the president of the American Federation of Labor, seem to think that it will be by no means impossible for the trade unions to perfect their organization as satisfactorily as can the organizers of capital improve theirs, so that they will be able to resist the encroachments of capital without difficulty. And again, if the organization of capital by means of its savings

creates a fund from which the laborers could draw if they had the power, these union leaders are inclined to believe that they can secure their full share of the funds thus brought about by the increased savings. They, therefore, assume no especially hostile attitude toward the combinations, which they consider inevitable, but are, on the whole, rather inclined to favor them, thinking that the laborers have the power to secure their proper share of any savings which may accrue to the community from combination.

It will be noted, of course, that if wages are thus increased to the wage earners, the result must inevitably be a checking of either the profits of the employer, or, what is perhaps more likely, of the lowering of the price to the consumer.

The real contest in many cases when laborers press their employers for higher wages is with the consumers. Wages can be increased if prices rise; and employers not infrequently find the consumer more docile than the laborer. Under such circumstances the workman at times, as consumer, gives back to his employer a good part of what he has received from him as an increase of wages; but even in this case

the new distribution proves to the advantage of the laborers as a class. Not all is paid back, for there are other consumers.

If by combination of capital with its saving of energy a new fund of wealth has been created, the capitalist and employer will try first to take it, and will claim that it is theirs justly, for they have by their intelligent action created this fund. The workmen will strive to secure it in the form of higher wages, and claim that it is justly theirs, for some of them have been thrown out of employment to make it, and theirs is the labor that is used to better advantage. The consumers will try to secure it through demanding lower prices, and they, too, will try to justify their claim. These savings, they say, would not have been possible save under modern social and economic conditions and laws, for which society as a whole, and no one special class, should have the credit.

The actual disposition of the fund will be arranged by struggle. If the combination does not succeed in holding competition down, the largest part will probably in the long run get to the consumers in lower prices, though, at times, as indicated in the last chapter, the employer

will take it and probably be forced to divide with his workmen. If competition is kept down, the employer will take the larger part at first; but he will be compelled soon to give part to the wage earners, if they are well organized and insistent, while the consumer, too, will probably eventually get part under the influence of a threatened competition.

It will probably be true that, in the case of a contest between organized capital and organized labor, the sympathy of the public will be on the side of labor; so that whatever benefit comes to either side from the pressure of public opinion is likely to accrue to the laborer. There is, to be sure, on the part of a good many a prejudice against labor unions, and particularly against those that have assumed great proportions and acquired great strength. It is possible that public opinion might even turn against them, provided they were to control substantially all of the working men in any line of industry. But it is much more likely that, for a long time to come, the aggressions of capital will arouse much more hostility on the part of the public than those of labor. In this contest, then, between the Trusts and the laborers, the advantage of public

opinion will remain chiefly with the laborer. But, for the present, contests between the Trusts and their employees have rarely arisen, excepting in the case of certain classes of workingmen who have been discharged by the combinations because their services are no longer needed.

Attention has already been called to the fact that certain classes of workingmen, such as commercial travellers, are no longer needed in so great numbers by the combinations as by the separate competing establishments. It will be recalled that the Whiskey Combination was able to dispense with the services of some three hundred travelling men upon its organization; that the American Steel and Wire Company was able to discharge some two hundred travelling men; and many other similar instances have been found.

Naturally the travelling men themselves, and in many cases others, are inclined to think that this discharge of travelling men is in itself a serious industrial evil. Reflection, however, will show that if the work is rendered really no longer necessary in order to supply the needs of consumers, or if the work can be equally well done by fewer men, the saving of this labor is a

distinct industrial gain similar to that which is found upon the introduction of a new machine. It is true, of course, that suffering is likely to be the lot of those discharged; as, in earlier days, upon the introduction of the power loom, many of the weavers were reduced to poverty, even to starvation. If, however, as seems to be the case, a real saving is effected by combination, though individuals may suffer, the working classes as a whole will be benefited, not merely by the reduced price of the article itself (if the Trust permits it to be reduced), so far as they are consumers, but also, within a comparatively short time, by the increased demand that will come for their services through the increased demand for the goods brought about by lowered prices. The advocates of the combinations do not hesitate to claim that this will be the effect, and any careful thinker will be inclined to agree that if the saving is a real one this must be the case, unless the Trust itself absorbs all the savings.

Aside from the commercial travellers, however, the class of employees that seems to be injured most is that of the superintendents or of the higher officers of the corporations which enter into the combination. In not a few in-

stances, many of the officers have been removed.

Mr. Gary, President of the Federal Steel Company, testified before the Industrial Commission that large savings had been effected through the displacement of unnecessary officers in the companies which entered the Federal Steel Company, and that some gain had also been made by the reduction of the salaries of officers that remained, inasmuch as they were given less responsible positions. He submitted a table showing the number of employees of all classes during the years 1898 and 1899, with their comparative wages. This showed an increase of 4.76 per cent. in the number of officers and clerks, but a decrease of 6.26 per cent. in their average daily pay, making a slight decrease in the total expenditures. Considering the decided increase in the number of laborers and the large increase also in the amount of business done, that seems to be a noticeable saving.

Mr. Gates, Chairman of the American Steel and Wire Company, testified also to the same effect. The official organizations of the separate plants that are in the American Steel and Wire Combination had been to a considerable extent done

away with. Each plant formerly had its president, vice-president, manager, and other officers, most of whom had been discharged, the business being put in the charge of the men in the central offices in New York and Chicago and the plants being operated under the direction of district superintendents. He was of the opinion that perhaps 50 per cent. of the high-priced officers had been dispensed with, as well as the two hundred travelling men mentioned before.

The fact that the laborers discharged by the combinations are to a considerable extent superintendents and travelling men, two classes of high-priced laborers, is likely to promote less hostility on the part of the laboring classes than if it were the ordinary workingmen who were discharged. In either case, however, the industrial effect depends, of course, on the use that is made of these savings. If they go entirely to increase the salaries of the officers that remain, or perhaps even in dividends to the stockholders, the savings will be considered of less general industrial benefit than if they go, to a considerable degree at least, to the public in the way of reduced prices or to the common laborers in increased wages.

The experience so far would seem to show that labor has been made more efficient by combinations of capital; that, owing to the better organization, there is a larger average output per workman; and that the benefits of this increased efficiency have been divided between employers and workmen, the consumer receiving as yet relatively little benefit directly. The last two years, however, have been very exceptional, and it is as yet too soon to speak with certainty as to ultimate results. So far, at any rate, no damage to the laborers as a class seems to have resulted, either in the way of decreased wages, in spite of the classes mentioned before that have clearly been injured, or in the way of less steadiness of employment. In fact, it is probable, as regards the latter feature, that employment may be made, and probably has been made, somewhat more steady, in spite of the fact that in some instances individual plants have been closed, apparently with no good reason, excepting to shorten the output in order that prices may be kept up, or, worse yet, to affect the stock market. Such acts cannot be too severely condemned. Happily they are not common, and the evil can apparently be reached by legisla-

tion. Numerous charges to the effect that the combinations have shortened the output in different industries for the sake of putting up prices have, of course, been made, but a careful study of all the evidence presented in different investigations along this line seems to show that this contention is often not justified. It is doubtless true that in individual cases plants have been closed for the sake of cutting off some one rival; but, generally speaking, plants closed are either unfortunately situated or have not been skilfully managed.

If the power of the labor organizations keeps itself commensurate with that of the combinations of capital, it is probable that the tendency toward the combination of these two at the expense of the consumer will, for a time at least, increase. The plan suggested by Mr. E. P. Smith, of Birmingham, England, to avoid strikes and other difficulties between employers and their employees, is of this nature. His suggestion is that combinations complete enough to control in good part an entire industry be made among employers on the one hand and employees on the other; that a committee representing both classes fix the relations between them as re-

gards wages, and to a considerable extent also as regards prices, it being understood that wages shall be fairly high and profits fairly large. In case, then, any new competitor of the capitalistic class comes into the business, by agreement of both parties prices would be cut to his customers, if necessary, and laborers in that line of industry would refuse to enter into his employ. On the other hand, if laborers in that industry were to increase beyond the normal demand of those in the combination, they would be opposed by the laborers already employed, and the employers in the organization would refuse to give them work. While this plan has been proposed, and perhaps justified, both in theory and in practice, most efficiently by Mr. Smith, it is nevertheless true that in this country, in Chicago at any rate, similar combinations in one or two lines of industry have been effected. The "forgotten man" in this case seems to be the consumer, inasmuch as the rate of profits and the rate of wages being both fixed by interested parties, although called fair, are likely to be higher than in many cases would be considered fair by the consumer.

The Trusts and Wages

An attorney of one of the prominent Trusts said some little time ago that, in his judgment, the ultimate outcome of the combinations of capital would be that their profits would be restricted, either by governmental action or otherwise, to a normal rate of five or six per cent., and that after this profit was paid the surplus arising from the savings of the combination would be divided between the laborer in high rates of wages and the consumer in low prices. He was not at all clear as to the forces which would bring about this result, beyond the fact that in some way public opinion would restrict closely the profits of the employer to what most people believed to be a fair rate. It, however, seems to be an easier step to secure a combination of employer and employee at the expense of the consumer than of the employee and the consumer at the expense of the employer. If the employer is to be closely restricted, it must doubtless be through legislation.

CHAPTER X

POLITICAL AND SOCIAL EFFECTS

Whatever may be the effects of industrial combinations upon prices, or wages, or profits, or investors in stocks, it is thought by many that they have a more subtle, and perhaps on that account more dangerous, effect upon our political and social organization and upon the morals of individuals.

It is a matter of common rumor and almost of common belief that the railroads and the large industrial combinations are able to influence to a material extent the acts of our legislatures and even the decisions of our courts. This influence is thought by many to constitute their chief menace to the integrity of our institutions and the welfare of the country.

It is doubtless true that in many cases large sums are paid by corporations to affect in some way or other the actions of legislatures. The officers of the corporations or their friends, if they speak at all on the subject, are likely to say that "strike"

bills are frequently introduced in the legislatures for the especial purpose of threatening their interests, in order that certain of the members may be paid to withdraw the hostile bill; and that it has been found both cheaper and much more effective to pay the very few people who employ this blackmailing plan than to attempt to defeat the hostile bill by fair argument. It seems also to be true at times that a bill which may be entirely proper and even beneficial to the public in its nature, but which also favors particularly the interests of some of the larger corporations, may be opposed by the party leaders or by individual representatives, until an amount of money has been paid either to party managers or to enough individual members of the legislature to secure the passage of the bill. Not long since a bill which was said to be entirely in the public interest, as well as in that of one of the large corporations, could be passed in the legislature of one of our larger States, it was reported, only by the payment of $150,000 to the leader of the party in power. Some of the larger corporations, business men say, expect to set aside for such uses a considerable sum to be charged to business expenses.

Before a committee of Congress, Mr. Havemeyer testified that the American Sugar Refining Company contributed in some States to the campaign fund of the Republican party, in others to that of the Democratic party, the intention being to stand well with the dominant party in each State. It was presumed that this custom was followed in order that, through the influence of the dominant party, both hostile legislation might be warded off in case of need, and measures, which, on the whole, were favorable to the interests of the company, might be more carefully considered perhaps than would otherwise be the case.

While it is probable that many individual cases of this kind occur, and that corporations, both in self-defence and for the sake of furthering their own interests, do at times buy members of legislatures, it is likewise probable that the prevalence of this custom is not a little exaggerated by many people, and especially by certain sections of the press. It is certainly true that the character of individual legislators and their faithfulness to their trust are considerably better than is commonly assumed in popular discussion in the newspapers.

But if we grant that corruption of the legislatures and even of the courts on the part of the large corporations is not infrequent, does it follow that the corporations should themselves be destroyed, or that they are chiefly to blame? Certainly no distinction can be made in this regard (although in other respects, as Mr. Bryan properly showed at Chicago, differences are clearly to be noted) between the capitalistic combinations called Trusts, and railroads or partnerships or wealthy individuals, and the evil seems to be common to all. The fault seems to be rather with the legislatures and the character of the men whom we, the public, send to them, or with our ethical and social standards, than with corporations as such. If the combinations have good features about them, it would certainly be unwise to attempt to destroy them because our legislators were dishonorable men. A much wiser as well as a much more certain and probably an equally practical measure, would be to endeavor in some way to improve the character of our legislators by better methods of election, or by general education, or to lessen the opportunities, through rules of our legislatures or otherwise, of those who are unscrupulous

enough either to blackmail a well-meaning corporation, or to take dishonest pay from a dishonorable corporation. That the political evil exists, is beyond question. That its cause is mainly the Trust and its only remedy the destruction of the Trust by no means follows, although that seems to be a normal presumption by very many.

Of much greater significance on the whole is the effect of industrial combination upon our social organization. The democratic social systems of the United States and of many of the newer English colonies, seem to have developed a power of self-control and of self-direction in the individual citizen which can rarely be found elsewhere in the world. This power of self-direction is found to a remarkable extent often in local governments, and in individuals, especially in business men. The chief purpose even of our school systems, in the judgment of many of our ablest and most high-minded teachers, is to develop among our rising citizens this power of self-control. In fact, M. Demolins, in his most interesting book, "Anglo-Saxon Superiority," ascribes the success of the English-speaking peoples in self-government and in the

establishment of colonial systems largely to this independent spirit, which he thinks has been developed in our systems of education, both that of the schools and that of the home, in the inclination of parents and teachers to compel children, especially the boys, to rely upon themselves in all the ordinary emergencies of life.

It is thought by many that competition in industry develops this power of individual self-direction, while the Trust system destroys it. Under the competitive system, each cares for his own. The one who shows on the whole the greatest power of self-reliance, self-direction, and skill—the fittest—is the one who, in the competitive struggle, survives. As his weaker rivals fall out, the plane of efficiency is elevated and the whole industrial structure is raised. This competitive struggle among individuals may be cruel in its effects upon those who lose, but from the strictly economic point of view it, so far at least, has generally seemed best for society, inasmuch as it has resulted in the success of the one most fit whenever the competition has been legal and just.

When, on the other hand, combinations among competitors are first made, the weaker,

instead of being forced to the wall, are saved, although their establishments may be closed by the combinations, and although they may have been taken into the combination on terms, relatively speaking, unfavorable. When the Whiskey Combination was organized with its eighty separate distilleries, of which nearly seventy were almost immediately closed or dismantled, unless in fact they had been closed before, dividends were paid equally upon all the property, although the absolute amounts paid to the stockholders who had put in their plants at low prices were, of course, comparatively small. When, in 1887, the Sugar Trust was organized, the weaker competitors were not forced to the wall, but were taken into the combination, although, doubtless, at a low valuation.

Aside from the effect upon individual character, consider first whether the community loses or gains economically by this apparent preference of the combination to buy up weaker establishments rather than to force them out of existence by a more determined competitive struggle. From the standpoint of the creditors it is probable that there is comparatively little difference in the methods employed. If compe-

tition should continue, and the weaker producer be forced into bankruptcy, so that his creditors would receive but fifty cents on a dollar, they would lose by so much. If, on the other hand, with the man's business in the same low condition, the establishment is bought up at fifty cents on the cost price, if the man is honestly eager to pay his debts, the situation is probably not materially different. A man who is compelled to sell to a combination at what he believes to be less than the value of his establishment under the competitive system, may, of course, have feelings of bitterness toward the combination that the bankrupt would not have toward any of his competitors; but the economic result to him and to his creditors would not be materially different. Both lose in either case.

During the continuance of the competitive struggle between rivals who eventually enter a Trust, or between a large combination and its outside rivals who are being gradually forced out of business, prices to consumers are likely to range low for a considerable period. Under those circumstances, it would seem that the consumers, for the time being at least, gain more than they would if the combination were earlier

effected, without any of the competitors being driven into bankruptcy. On the other hand, it must not be forgotten that the most vigorous competition is almost of necessity wasteful. While on the one hand the ablest competitors rely upon excellence for their success, many others, especially in the last stages before they yield, resort to questionable practices. Cheap devices are sometimes employed which are likely to result in imperfect goods. The manufacture of shoddy instead of genuine goods is sometimes encouraged. Desperate means to secure unwarranted credits are often resorted to; and the loss from these sources, as well as the direct loss to the competitors themselves, is likely to more than offset the gain to the consumers from the temporary lowering of price until the producers are, many of them, driven into bankruptcy. Besides this, the combination or the surviving competitor is likely, when the fight is won, to recoup his losses by demanding an indemnity, not from the vanquished as does a victorious nation, for that would be a vain attempt, but from the onlookers, the consumers. The victor will ask, too, why the consumers ought not to pay the indemnity. They have been,

through low prices, the beneficiaries of the conflict.

A reasonable competition, which may indeed force out one by one individual producers, is clearly a healthful influence in the industrial community, stimulating the better ones to their best efforts and raising the plane of efficiency. A competition of this nature where, one by one, the weaker competitors drop out and more efficient ones come into the industry from time to time produces no crisis in that industry. On the other hand, fierce competition among rivals nearly equal, especially when large amounts of fixed capital are involved, not merely leads to the wastes already mentioned of ill-advised methods and measures, and losses to practically all of the competitors themselves, but, further, leads to general depression in the line of industry involved. This depression will lead to shifting of capital from that industry into other lines for which, under normal conditions, there is not so great need in the community, and this, in itself, involves another industrial loss. For these reasons it is probable that, when competition is of this nature, the community will gain from the economic viewpoint by a combination which

stops the competition before it has reached the ruinous stage, even though it does involve for the time being the taking of some plants that are comparatively useless. The value of those plants will, in part at least, be saved by employing them in other lines of industry; but even where the loss is temporarily a total one, it is likely to be less to the community as a whole as well as to the combination itself than would result from a continuance of the competition to the ruin of a large proportion of the competitors. When unfair and illegal methods of competition are employed, such as the use of discriminating rates on railroads, or any dishonorable practices, the above discussion does not apply. Such unfair and illegal methods put the question rather into the field of criminal law or social ethics. Such practices are under no circumstances to be justified or defended.

But aside from the effect of the avoidance of bankruptcy on the part of numbers in the community, it is often urged, and that with much reason, that under the present system of production on a large scale, an individual cannot start independently in business, unless he has large capital or is in some way personally in favor with the

managers of the larger combinations. We have, therefore, in the community, it is said, a few magnates in productive activity, together with multitudes of men of sound judgment, capable of managing large enterprises independently, who are reduced to the position of employees—their individuality dwarfed, the development of their manhood checked—all this, of course, to the detriment of the State.

So far as this contention is true (and there is much truth in it), it is perhaps the most serious objection that can be made to the present system of industrial combination. It is a well-known fact that the high officials in our large insurance companies, in our railroad systems, in our banks, and in other great industrial enterprises, do give opportunities to their children and their friends for advancement in the direction of industrial enterprises which could not so readily at least be secured by others. On the other hand, it is doubtless true that if these scions of the industrial magnates show themselves incompetent, they often will be soon removed from their positions, or dropped into others of less responsibility, while the more capable men who have earned their positions

take their places. If such a course is not taken, the rivalry of old or new capital will soon make itself felt. The savings of combination before mentioned will be more than offset by the losses arising from incompetent management, and the combination will fall before its smaller rivals. That this tendency in great corporations toward nepotism is strong cannot be doubted. If it is not largely overcome through the variety of interests in the combination itself, it will be an easy matter for competition to hold its own in another short generation.

On the other side, however, of this vital question, there are one or two matters for consideration. Many men are now trying to work independently who are industrially fit only to work under direction. Any careful business man or observer of business conditions can probably name among his acquaintances men who, good workmen perhaps, are fit to be carpenters or machinists or tailors while working under the direction of others, but who wish to become and at times do become contractors, or who open stores of their own where they are in positions of financial responsibility as heads of establishments, and who, whenever they secure

such independent positions, invariably bring disaster upon themselves and consequent discomfort to their families and loss to their creditors. There can be no question that, from the strictly economic point of view at least, the endeavor of these men to manage a business independently, when they are fit only to be workmen under the direction of others, is a distinct evil. Unless the waste is needed to enable society to select the business leaders, or unless men who work under the supervision of others are deprived of their individuality, the loss is probably great enough to overbalance any gain which society derives from their attempts at managing a business for which they are not fit.

The fact should not be overlooked that persons holding subordinate positions are usually granted much more independence in work than is often thought. In a large mercantile or manufacturing establishment the heads of departments ordinarily have full discretion in the management of their departments as long as they prove successful. Their employers look for results. They are given general directions in order that they may fit properly into their places in the great organization, but they have

full discretion as regards the details of management, and in most cases have as great opportunities for showing their originality and for testing their powers of combination and organization as it would be possible for them to have in managing with entire independence a much smaller business.

When a number of small railroads are brought together into a large system, a number of presidents of railroads lose their positions as presidents to be sure, but most of them are retained as division superintendents, managing the same lines of road which before they managed as presidents, employing for the most part the same men, receiving as good pay, and being given almost if not quite as much discretion as before in the general management of their roads. It is true that they must report to a superior, but it must not be forgotten that as presidents of the roads they also reported to their directors, and that their work was subject to criticism even before the combination was made.

Indeed, comparatively few men in important positions at the present time are entirely without responsibility to others. The president of a railroad reports to his directors; presidents and

professors in universities, superintendents of schools, heads of practically all governmental departments, are subject to control, and more or less subject to direction. The art of managing one's superiors by tact, honesty, and excellence in service is also an art which develops individuality, perhaps to even as great an extent as the power of acting with entire independence, owing responsibility to none, excepting perhaps to one's creditors through the action of a court. A wise superintendent of schools, to show his power over his trustees, said to a friend some time ago that they had never refused any request that he had made. His thoughtful friend replied, "Then you have been exceedingly wise in making your requests." The wise executive officer has little difficulty with his superiors, and one cannot say that his individuality is in any way weakened by the fact that he is held responsible by those superiors.

The weakness of most employees is, that they do not attempt to think independently in their work, and that they make no effort to exercise original power in the performance of their duties. There are few positions in which independent thought (not, of course, independent action without consultation) will not count. The employer

is rare who will not trust to the fullest extent any employee who shows himself fully worthy of confidence, and who will not give him every opportunity to develop original independent power. Of course the fact is not overlooked that much work is largely routine, but the statements are not too strong when one speaks of opportunities for independent thought under the competitive system as compared with those under the combinations. Under both, the great majority are not expected to do much planning.

As the system of industrial combination develops, it seems now that there will be many of these positions to be held by subordinate superintendents, which will be equally satisfactory from the financial point of view as the headship of small establishments, and which in most cases will afford an opportunity for enterprise and independent judgment not materially less satisfactory, while, on the other hand, there will be created some positions which are far greater prizes in the industrial world than could ever be found under the former system of competition; and yet experience has not so far shown that favoritism instead of excellent work will not for a long time fill many of these places.

To those, again, who are of the opinion that the large corporations often compel their employees to engage in practices which are not in accordance with the strictest morals—for this complaint is sometimes made—it may be said that one is as seldom urged to do wrong by his employers as by the system under which he works. The pressure of competition against the individual producer not infrequently leads to misrepresentation regarding credit and to dishonorable practices in methods of manufacture and sale of goods. How many of our taxpayers deal fairly and openly by the State? The system of combination may, and does indeed in many cases, lead to wrong acts on the part of individuals. If our eyes are open, we may see that it is questionable whether the competitive system leads to fewer. There is much to be done in the way of improving our standards of business morals; and yet it is probably not too much to say that on the whole, whatever the form of our present industrial system, they are improving, in spite of the many evil practices which we see. A high standard of business character probably never before counted for so much as it does to-day.

In estimating the extent of both the economic and social effects of industrial combinations it is essential to note that their activity is limited now to only a part of the industrial field; and there seems no likelihood that they will in this era, if ever, cover it entirely. So far, at least, they have proved to be most successful, with apparently a degree of permanence, only in those industries which require much capital for successful prosecution; in which the product is uniform in its nature and the productive work of a routine character; those in which the product is bulky and there is a wide distribution of freight; or those in which other somewhat similar characteristics of a special nature, such as very expensive advertising, patents, etc., serve to encourage the combination of capital.

On the other hand, there have been few combinations, as yet, at least, in agriculture. It is true that there has been an occasional corner of wheat in some one market. In some of our larger cities there have been combinations which to a considerable extent have controlled the supply of milk in that locality. At the present time there is a large combination in the

manufacture of flour, but that controls only a small proportion of the market, and is even now in financial straits. Speaking generally, food products of all kinds that come from the farm and from the small producer are largely beyond the control of the combinations, though the production of dressed beef seems to form a partial exception in the opinion of some observers.

So, again, in lines of manufacture in which little capital is needed to start a successful establishment, although there may be large combinations, competition against them is so easy that they comparatively seldom secure control of a very large proportion of the market, and the evils from them to the community can be only comparatively small.

When goods produced are of such a nature that a person can stamp his individuality upon them—as in all work that is essentially artistic, including even millinery and fashionable tailoring—or when individual work is required in production, it seems clear as yet that there can be no monopoly that will be dangerous to the community, or any monopoly at all, without government aid and support, which can materially affect the life of the community. The

monopoly of genius is individual, and cannot be effected by a combination, though the combination may sometimes buy its service.

Experience only can show the limit of the field of combination. There can, however, be little doubt, on the basis even of our present experience, that its field is considerably more limited than has been thought by many during the past decade, and that there still remains opportunity to find his place for each one who is capable of independent work. On the other hand, it seems equally true that, whenever the nature of the industry is one which is peculiarly adapted for organization on a large scale, these peculiarities will so strengthen the tendency toward a virtual monopoly that, without legal aid and without special discriminations or advantages being granted by either the State or any other influence, a combination will be made, and, if shrewdly managed, can and, after more experience in this line has been gained, probably will practically control permanently the market, unless special legal efforts better directed than any so far attempted shall prevent. Even when the combinations exist, however, the social effect, while in certain directions exceedingly unpleasant,

especially to those who are in competition when the organization begins its work, is yet not all evil. The Trusts afford greater scope for individual power and independent management than has been ordinarily supposed, although they are practically certain to bring most positive injuries to society, unless they can be brought, better than they now are, under social control. Although, as has been shown, their power is much more limited in the long run by business conditions than has been supposed by many, and although, as their methods become better known, their influence will be still more restricted without positive action against them, their power over prices and wages and social and business conditions is still too great to be left in the hands of interested parties without legislative check. One of the leaders of a great combination said of their industry some six months ago: "We control conditions." Such power should at least be put under supervision of those who represent society.

CHAPTER XI

LEGISLATION

Some of the platforms of political parties speak of the Trusts as if they were unmitigated evils. Others attempt to distinguish between good Trusts and bad Trusts. If the opinions expressed in the preceding pages are true, it is probable that few Trusts are entirely evil, and that none are all good. We need rather to recognize that from the viewpoint of social prosperity the modern system of industrial combination has good qualities and bad ones. Before undertaking a discussion of legislation that may serve as a proper remedy for the evils of industrial combinations, it will be well, therefore, to summarize their good and their evil qualities.

We may recognize as good qualities the saving of the wastes of competition. These wastes are many and often great. The combination saves a waste of capital by the prompt abandonment of poor or badly situated plants and the concentration of energy in the best ones which

can be run to their full capacity and all of the time; by making the best possible use of waste material through the production of by-products; by pushing, often at much expense, markets into new fields, both at home and abroad, through the employment of the ablest men and the best advertising devices, which could not so well be afforded by smaller institutions. There is great saving of energy in the elimination of cross freights; in the best possible division of labor, and the organization of correlated branches to the best advantage; in the securing of the best ability to manage industries; in making the best distribution of managing ability, giving to each person the work for which he is best adapted; in furnishing opportunities fit for the employment of the greatest capacity in all fields of business management, opportunities which could not be furnished without the enormous power that comes from the concentration of capital.

Enormous as these benefits to society may be from this better organization of capital under the new régime, no less pronounced are the evils. (1) Investors of capital are often grievously wronged through concealment of facts

and deception practised by promoters and directors at the time an industry is organized, and, later, through misrepresentation of the condition of business and of the methods in which a business is carried on. The greatest evil at the time of the organization or extension of the business probably comes from stock watering, a process which could not profitably be carried on without concealment and deception.

(2) A second class of persons injured is that of the stockholders. Directors not infrequently manage the business in their own interests, regardless of those of the stockholders. At times it is really made less profitable, or is so managed as apparently to be less profitable, in order to depress the stock on the market and to enable the directors through gambling speculations to reap large profits. Or, again, if the business itself is successfully managed, its methods of management may be kept secret, and the directors, through their exclusive knowledge, will reap large profits by buying or selling at the expense of their fellow stockholders, who, from the nature of the case, cannot be so well informed as they.

(3) Persons, not members of a corporation,

may be injured as consumers by high prices, which can be kept high, provided the combination can secure monopolistic power. The temptation to keep prices above former competitive rates is, of course, greatly increased when the corporation has issued large amounts of watered stock.

(4) The producers of raw material may be injured by low prices, which the combination, by virtue of its being the largest, if not almost the sole buyer, can compel the producer to accept.

(5) The combination may so increase its power as to injure the wage earners by compelling them to accept lower wages or to work under less favorable conditions than would be granted by competing concerns. So, too, the power exercised, apparently arbitrarily at times, of closing part of the plants to avert a strike, or even to affect the stock market, is dangerous.

(6) It may happen at times that the larger organizations will exert so powerful an influence on our political organizations that the purpose of the State will be directed away from the common weal.

(7) The mental tone of the business com-

munity may be lowered by depriving individuals of the privilege and of the power to enter independently into business as readily as could be done were capital less concentrated. It should be borne in mind that this evil, while it exists, is offset, in part, by some of the advantages mentioned above.

(8) And, again, the moral tone of business may be lowered. If the larger organizations employ unscrupulous methods in dealing with competitors, or customers, or laborers, their greater power, especially if it is great enough to give them a partial or complete monopoly for a time, will have a much more detrimental influence than the same acts of an individual, both on account of the range of its application and of the more powerful influence of its example. Here again it may be well to state that there is no reason to believe that individuals managing these large combinations of capital are worse morally, or have more evil intentions as regards competitors or the public than managers of small establishments. Both classes look carefully after their own interests, and feel themselves justified in so doing; but the power of the manager of the large corpora-

tion is greater, and the injuries, both economic and moral, to the public from his selfish acts may be much more severe.

Many of those who are most inclined toward the doctrine of freedom in industry think that the wisest policy in dealing with the combinations is the let alone policy, except so far as advantages are secured by the combinations through certain restrictive provisions in our laws, such as tariffs or patents. Such advocates, of course, advise the removal of these discriminating favors. Some of those persons, on the other hand, who are most impressed with the evils of the combinations, have advocated their absolute destruction by legislative measures.

Twenty-seven States and Territories have passed laws intended to destroy such industrial combinations as now exist, and to prevent the formation of others. Fifteen States have similar provisions in their constitutions, although four of these have not enacted statutory measures to carry out these constitutional provisions. Besides this legislation on the part of our States, we have a Federal Anti-Trust Act (the so-called Sherman Act of 1890); and certain provisions of the Interstate Commerce Law of 1887, by

checking discriminations, work against industrial combinations. A study of these statutes and of the decisions of our courts of last resort which have been made under them, will show that they have had comparatively little, practically no effect, as regards the trend of our industrial development.

It is true that through these acts of legislatures and courts the form of combination has varied more or less. Through the influence of these statutes also the tenets of the common law regarding monopoly and restraint of trade have been slightly changed. Under the common law restraint of trade needed to be unreasonable in order to be condemned; under some of these statutes all restraint of trade, whether reasonable or unreasonable, is condemned. Some of the statutes have gone to such extremes that, had they been literally interpreted, they would practically have stopped many of the ordinary agreements in business which are necessary for its successful prosecution, and which are without any intention or any effect of monopoly or of other practice which would tend in any way to the injury of the community. In the interpretation of the statutes, however, our courts have regularly been rather more conserva-

tive than the lawmakers, and have practically insisted that there should be monopoly, either in intent or to a certain degree at least in fact, before an industrial organization should be held illegal. It may be said therefore that, so far as State legislation is concerned at least, this destructive tendency in legislation has perhaps already accomplished its utmost, unless more power be granted the States. If Congress were to give to the States control over interstate traffic carried on within their borders, as has been advocated, possibly still more might be done in that direction.

So far as the industrial combinations are the result of special advantages granted to individuals or to corporations, whether by the State or by others, it is probable that in most instances the evil effects would be lessened, if not even completely removed, by the removal of such discriminating favors. If railroads are giving special rates to large shippers, and are thus building up monopolistic organizations, such discriminations, which are illegal now, should be stopped by the application of more effective remedies. It is probable that the hands of the Interstate Commerce Commission can be

by law materially strengthened, and thereby this evil materially lessened. If enacted into law by Congress, the recommendations of the Industrial Commission—that the Interstate Commerce Commission be given the power of audit of accounts of railroads, and that its decisions regarding freight rates go into force and remain in force until reversed by a decree of court on the appeal of the shipper, as well as the still further suggestion that penalties be fines against the corporation and not imprisonment of the official—it is probable, would materially lessen, at any rate, this evil of freight discriminations in favor of the combinations. The bill lately passed by the House of Representatives looks somewhat in the same direction, but possibly attempts to go further than is wise. It is well to be temperate in legislation which affects profoundly the whole industrial structure, and to "make haste slowly." The end will often be sooner reached.

Likewise, the monopoly that comes from the holding of patents, as in the case of wire fencing, or as has been the case with the telephone, can perhaps be removed by amendments to our patent laws. It has been suggested that instead of our

granting a legal monopoly to an inventor, the production of the invention should be left free to all who stand ready to pay him a royalty fixed by the law. He would thus be made surer of his reward, while the public would be benefited by cheaper patented goods instead of injured by the patent monopoly, as seems now at times to be the case. The details of such an amendment to the patent law may well afford a subject for careful study.

So far as the remedy of a removal or lessening of the tariff on products which are largely controlled by industrial combinations is concerned, that has already been discussed in Chapter II. It is in all probability true that by such removal of the tariff the evil effects of the higher price would, for the time being at any rate, be materially lessened, and the suggestion of this remedy is certainly good, provided the remedy were applied with reasonable discretion and a reasonable judgment regarding present industrial conditions. But, on the other hand, as has been said before, it must be perfectly evident that the removal of the tariff would not destroy in this country an industrial combination without first destroying its surviving rivals—while it might also very

readily be in many cases the one incentive needed toward bringing about a world-wide combination against which tariffs could not avail.

Amendments to the corporation laws which would hold officers and directors and promoters to more direct responsibility would be serviceable, and should be especially directed to the prevention of their activity in the stock market. That end can probably be attained by the next remedy suggested.

A remedy which would strike directly at the most crying evils of the industrial combinations is publicity, which has been so often advocated during the past year. Publicity regarding the organization of a business, which should compel promoters to show clearly to investors the basis on which a large corporation or a combination of corporations is organized, would certainly put careful investors into a position to protect themselves. Of course there would still be foolish people who would buy gambling stocks, credulous ones who, without investigation, would believe any story told in the papers. The State cannot well protect such, without destroying personal freedom. It is doing enough if it enables a careful man to protect himself.

More frequent reports regarding the condition of a business, carefully audited by persons working in the interests of the stockholders, and quite possibly under the supervision of the government, as has been lately advocated by Mr. Bird S. Coler, the Comptroller of the City of New York,* will still further protect stockholders against the corrupt practices of directors. Excellent, however, as is the general purpose of Mr. Coler's plan, and sound as are many of his arguments, he goes so far as, under our present conditions, to run the risk of exposing every sound conservative business to the danger of blackmail, and in one or two particulars at least to hamper unnecessarily a sound and beneficial business. There is decided objection to putting too much power in the hands of government inspectors with discretion, when the same end of government enforcement of publicity can be better accomplished in other ways. It is of course possible that if Mr. Coler were to put his views into a definite bill, some changes in them would be made, or his opinion would be more clearly understood.

The publicity also which should show with a

* See Appendix C.

reasonable degree of detail the profits of the larger combinations would, in case of the abuse of their power, so stimulate competition against them, either actually or potentially, that consumers would to a great degree be protected against excessive increase in prices.

At the same time the laborer, through his fulness of knowledge regarding the financial condition of his employer, would be enabled to make his demands at times when it would be wise to grant them, and would avoid the mistakes too frequent at present, of striking on a falling market when his employer's losses are such that he stands ready to close his establishment if any excuse is offered him.

The degree of publicity needed and the method of its enforcement as regarded by others who recommend publicity, can perhaps be shown best by the study of the bill drawn for Governor Roosevelt, The New York Business Companies' Act: 1900.*

It is interesting to note, too, that Mr. Bryan, while advocating national regulation, has also publicity in mind as a chief remedy for the two great evils of stock watering and monopoly.

* See Appendix D.

A national government license, he thinks, should be secured, before a corporation should be allowed to do business outside the State of its origin.*

This is not the place to go into a detailed discussion of the legal questions regarding the scope of federal legislation as compared with that of the States, nor to discuss the amendment to the Constitution of the United States proposed by the Judiciary Committee of the House of Representatives at the last session of Congress. It is purely a legal question as to whether publicity can be enforced at present by the federal courts or under a law passed by Congress without an amendment to the Constitution.

It may be said, however, that if three or four of our largest States, such as New York, Pennsylvania, Illinois, and Massachusetts, were to enact laws along somewhat similar lines, which should afford the greatest facilities to corporations organized honestly for the purpose of conducting a legitimate business, while at the same time they should compel a reasonable degree of publicity regarding both the organization and the management, much could be accomplished,

* See Appendix E.

even though the legislation were not uniform in all the States. Our States can impose conditions upon which they will permit foreign corporations to do business within their borders, except so far as that business is of an interstate nature. A few of our larger States so uniting, would control so large a part of the business of the nation that, if their provisions regarding the legitimate employment of honest capital were liberal and fair, corporations organized with speculative ends in view would be so discredited that the larger part of their evils would be swept away.

Through this publicity thus secured, we might well secure other information which would lead as time went on to regulation more definite and more rigorous. But for the time at least, it is probably unwise to enter upon any measure beyond those mentioned, until our information is somewhat more complete. There remains beyond doubt, as soon as our knowledge is sufficiently definite regarding the workings of these organizations, a taxing power which can compel, and that readily, a distribution of any surplus profits to the community. It is probable, however, that before this remedy would

need to be applied to any rigorous degree, this same distribution, as soon as the conditions were fully known, would be made more equitably and more justly under the simple pressure of public opinion, through lessening prices and higher wages. That result, however, desirable as it is, and one upon which our eyes should be fixed as the ultimate goal, is one which can be secured by legislation without grave harm to our delicate industrial machinery only through the knowledge that comes from a wider and longer experience.

CHAPTER XII

INDUSTRIAL COMBINATIONS IN EUROPE*

The study of industrial combinations under the differing conditions in Europe serves to confirm to a material extent the conclusions reached in preceding chapters. It is probable that in Germany and Austria, if not even in England, industrial combinations cover as many different industries, and control as large a portion of the manufactures in each industry as is the case in the United States.

On the other hand, in England only is the form of combination generally that of a single corporation owning many separate establishments. In all of these countries are found numerous combinations of the primitive form mentioned in the earlier chapters, which are merely agreements—often local in their nature—among different manufacturers or dealers to limit

* Material for this chapter was gathered primarily for the United States Industrial Commission in Europe in the summer of 1900. Printed material has been collected since.

the amount of their output or to maintain prices at a rate agreed upon. But in all of the countries also, aside from this loose and often merely local arrangement, there are large combinations controlling ninety per cent. or more of the entire output of a single product within the country named, in many cases having an international influence.

The causes of combinations as given by those who have been most active in forming them and in managing their affairs are substantially the same everywhere as in the United States, showing that the principle of combination itself is one which seems normally fitted to our present stage of industrial development and one which is not dependent upon mere local conditions or legislation.

The desire to avoid ruinous competition is practically always mentioned as the chief cause. With that are associated the various savings spoken of in Chapter II., although naturally some of these savings are dependent to a considerable extent upon the form of combination itself, and therefore in many individual cases are not found. Speaking generally, however, the opportunity of avoiding cross freights, of

running plants to full capacity and on full time, of special adaptation of machinery, and specialization of different plants upon special products, with the corresponding specialization of individual skill on the part of the managers and workmen, the common use of patents, brands, etc., the savings in advertising, the lessening of the cost of superintendence, the possibility at times of saving of labor, particularly of travelling men, and the other savings enumerated, are some of them found practically everywhere, and practically all of them are found somewhere in studying the different combinations.

Certain local circumstances in Europe, rarely found in the United States, are met with which tend somewhat to check their growth. For example, in most of the older countries, a manufacturing firm is frequently found which has been established for several generations, possibly even for centuries. The members of the family naturally take great pride in their business, and the business itself becomes to a considerable extent hereditary. Often, beyond doubt, through this business inbreeding, careless habits and wasteful methods creep in, and at times the sons or lineal descendants of the able founders of

the business prove to have much less business skill than their predecessors. In more than one instance men have hesitated to enter combinations, because, as they said, they had hoped to hand their business down to their sons, but they knew that if a great combination was formed, the officers of which must be selected on the ground of business capacity, their sons must either withdraw or take a subordinate place. From the point of view of economic efficiency, it is doubtless desirable in many of these cases for the firm to be replaced by the combination.

Some of these same influences too, taken with others, such as the corporation laws, the attitude of the courts, and the state of public opinion, while not lessening materially the drift toward combination, have nevertheless affected decidedly the form which the combinations have assumed. Not having yet felt the pressure of competition to quite so great a degree perhaps, as have manufacturers in the United States in many instances, and not having so often the habit of conducting various kinds of enterprises jointly, and, in consequence, of submitting one's individual will in many matters to what seems to be the joint interest of a group, the individual

manufacturers in nearly all of Europe seem to struggle more vigorously against selling out or against subordinating themselves to the direction of a single managing head than do the independent manufacturers in the United States. One can hardly ascribe this difference to a greater spirit of independence, in the proper sense of that word, than exists in the United States, as is so often claimed by the foreigners themselves; but a less degree of willingness to abide by the decision of a majority and to cast one's own lot in with that of others seems to be clearly noticeable.

The law has apparently also in all of the countries, although, as will be seen later, there are some apparent exceptions, been ready to uphold contracts to limit the amount of the output, or even to sell goods at a certain fixed rate—contracts which in the United States would be held contrary to many of our newer anti-Trust laws, and which even would, in certain instances at least, come under the common law principle forbiding contracts in restraint of trade. It has not been necessary, therefore, in order to bring about a uniform management, that the separate establishments sell out completely;

it suffices often if they agree one with the other upon the percentage of the entire output that will be produced by each member of the combination, and then put into the hands of a common selling bureau organized in the interests of all and with its managers elected by them all, the selling of their entire product, as well as the allotment to each of his quota of production whenever a change in circumstances arises.

This is the form of combination most generally found in Europe—a central selling bureau, to which is given the power also of fixing the output, while in the organization agreement itself the proportional share of each member in the entire output is laid down.

Often with this general agreement, there are certain local peculiarities or variations dependent upon the nature of the combination itself. For example, in the case of the coal and iron syndicates, ordinarily, while the entire product offered for sale within the home country must go through the hands of the bureau, reservation to the producer is regularly made of the material or fuel used within the establishment itself. In the Austrian iron combination each member sells his own product.

In the case of the powerful sugar combinations of Austria and Germany, the refiners of sugar guarantee to the producers of the raw sugar a certain fixed minimum price. In case the price fixed in the world's market, as represented by the market at Magdeburg in Germany, or Vienna in Austria, is below this minimum price, the refiners must make up the difference, and recoup themselves by higher prices to the consumers for the refined product. Such a plan of working has for many years proved eminently successful in Austria, and there seems no reason to doubt that a similar result will be reached in Germany.

Speaking generally, even in the case of the greater combinations in England, which have assumed the corporate form, it is probable that to the managers of the individual plants a somewhat greater degree of independence is permitted than is the case in the United States. The managing directors of the Bradford Dyers' Association say that in that business, where individual taste is of so great importance, they have found it wiser to encourage each individual superintendent to increase his sales as much as possible by exercising his inventive skill in pro-

ducing a special quality of goods. They stimulate him still further to good work by paying only a small fixed salary and then making a large percentage of his income dependent upon the profits of his separate plant. A rigid system of comparative book-keeping among the different establishments is maintained, so that the managing directors and the individual superintendents are able to affect work to a material extent through this stimulus of rivalry.

In Austria and Germany there are several combinations, although they are not among the largest, which have taken the form of corporations, such as the brush manufacturers of Nürnberg and the soda water manufacturers of Vienna, but these are exceptional. In England, on the other hand, the greatest of the combinations have taken this form, and their reasons for doing so are substantially those given in the United States—that thereby they can make more savings, and they can enter thus more effectively into the world's markets.

Very peculiar in its form, and so far as I am aware, entirely unique in its methods and results, is the brass bedstead combination in Birmingham, England, organized and largely

managed by Mr. E. J. Smith. As a result of much observation, Mr. Smith had reached the conclusion that ruinous competition was often the result of ignorance and careless management on the part of some competing establishments, they never having taken the pains to figure accurately their exact costs of production. He believes that it is not merely good business policy to get fair profits, but that it is also immoral under ordinary circumstances for a manufacturer to sell his goods below cost with the certainty of ultimate ruin before him if he continues the practice. He likewise is of the opinion that the laborers should have an active interest in the business and should prosper with the prosperity of their employer. Acting on these principles, he has organized several combinations on substantially the following plan.

In the first place, the laborers of all the plants entering the combination must be organized into a union so that they can act as a unit as well as do their employers. In the second place, each establishment must make a very accurate statement of its actual cost of production, including interest on capital invested, a fair salary to the manager, even though he be the owner, a rea-

sonable amount for depreciation of plant, and even at times a certain allowance to the employer above his actual salary for the added expense to which he is put by virtue of his higher social station. On the basis of these returns, then, a minimum cost for the product is fixed for all of the establishments, and no one is permitted to sell below a certain percentage above that rate. Each employer manages his own establishment, sells his own goods, acts entirely independently in every way, with the exception that he must not cut his price below a certain percentage of profit on this agreed-upon minimum cost. If, with the market rate thus fixed substantially by the cost of production in the poorer plants, one can make his products cheaper owing to greater skill, his profits will naturally be larger.

The laborers benefit also from the combination in like proportion, inasmuch as starting with agreed-upon normal wages on the basis of a minimum price and normal profits, they receive a bonus of an increase of wages in proportion to every increase in profits made by their employer. The workmen agree to work for no one excepting employers belonging to

the association, whereas the employers, on their part, agree to hire no one excepting men belonging to this union. It is thus a coalition between employers and employees to secure high wages, and at any rate reasonable profits, although this may well be at the expense of the general consumer. Mr. Smith says that he does not consider one of his combinations a success until it has shown itself able to increase prices. He does not think that the consuming public ought to be aggrieved at any normal increase in price thus made, because he believes that laborers and capitalists are worthy of their hire, and that consumers ought to be willing to pay not merely cut-throat prices, but what he calls "reasonable prices."

It is true that he acknowledges that the average profit agreed upon for the bedstead combination was about 10 per cent. on the entire cost of production, and that in the industry in question a turn over of the capital was expected from two to three times each year, making certainly a profit that would, by most consumers, at any rate, if not by others, be considered plenty high enough. This plan of Mr. Smith's seemed to have worked very suc-

cessfully for some ten years in the bedstead trade, and to have spread successfully in other lines; but within a few months misfortunes have come and the combination has been, temporarily, at any rate, under somewhat of a cloud.

It is probable that in Europe capitalization is, relatively speaking, not so high as in the United States. This is due in part to business habits—more particularly, probably, to the greater degree of publicity required for corporations as well as for most other forms of business enterprises. In England, when one of the large corporations has been formed, there has been made pretty regularly a careful appraisal of the value of the separate plants as going concerns with a capitalization at a moderate rate of the earnings of the separate plants for several years preceding the combination. It is doubtless true that in a good many instances these appraisals are made rather high; but so far as one can learn, it has been only in the rarest cases that there has been issued watered stock to double or treble or quadruple the value of the tangible assets, and rarely also is the stock issued beyond an amount upon which there might be reasonable hope of paying dividends.

In Germany, Austria, and France, whenever the combinations have assumed the form of a stock corporation, the rigid laws have practically held capitalization down to the actual cash value of the assets, estimating the establishment as a going concern, the promoter receiving his pay, if he receives it at all, either in some fixed sum for his trouble or in the profit that would come from selling shares at a premium.

The effect of the combinations in Europe on prices of the product seems to have been, on the whole, substantially that which has been indicated in Chapter VIII. as the effects of the United States combinations. Managers call attention to the savings of combination, and to the fact that at times prices are lowered; but perhaps more frequently, when one considers the matter with them dispassionately, they will acknowledge that they believe the former profits were too low, and that their prices have, on the whole, been slightly increased as a result of the combination. Almost invariably they add that they hope ultimately to be able to reduce the absolute prices more rapidly than they could have done without the combination; but they expect, practically in all cases, to maintain the margin

between the cost of the raw material and the price of the finished product at a somewhat higher rate than existed before. Practically, however, in every case, they believe, that by their adaptation of the supply of the product to the market demand they will be able to keep prices much steadier than before, and to keep their labor more regularly employed, thus not merely ensuring somewhat more secure profits for themselves, but also protecting to a very material extent both the laborers and the consuming public against the ill effects of commercial crises brought on often by unregulated and ignorant over-production.

More interesting in certain ways than the mere study of domestic prices is the subject of export prices and the relation of the tariff to prices. Of course it has been the custom in most countries, not merely in the export but also in the domestic trade, when customers are somewhat widely removed from the manufacturing establishment and it is somewhat difficult to secure their patronage, to make particularly low prices in order to get rid of a surplus stock. It has regularly been explained, and doubtless with much reason, that this disposal

of a surplus stock at low rates, even indeed below cost, does not increase the price of the product to home consumers, inasmuch as by exporting the surplus the plant can be run to its full capacity when otherwise it is necessary to close it down at intervals in order to prevent an accumulation of surplus stock. The cheaper production coming from running the plant all of the time at full capacity may thus so lessen the cost of manufacture that the domestic product may sell lower, even though the profit on it is paying for the loss of the export goods, than would have been possible had a much smaller product been manufactured at the increased cost brought about by only a partial use of the producing capacity.

Many persons, however, have been inclined to criticise the combinations by asserting that owing to their monopolistic power they were able to secure abnormally high prices from consumers at home, and that when they sold abroad at somewhat lower rates, they were still not selling at a loss, but were thus showing merely the degree of oppression which they were exercising upon the home consumer.

This argument has frequently been combined

with that made in connection with a protective tariff. When in a protected industry relieved of foreign competition domestic prices are kept materially higher than export prices, it is perhaps a not unnatural conclusion that the tariff is fostering monopoly, and that the monopoly is making huge profits at the expense of the domestic consumer. Doubtless in certain cases there is a very considerable element of truth in the charge, but the reply is ordinarily given as above.

Herr Wittgenstein, the founder of the great iron combination in Austria, explains that the protective tariff was needed for the sake of the industry, and had been levied by the government because it was wise. Ought not, therefore, the manufacturer to meet the expectations of the law-givers by adding to the price at which foreign goods might without the protective tariff be sold in the country the amount of the tariff itself? In case this were unreasonable, why was the tariff levied? If it proved unreasonable, let it be lowered. So far as selling the goods in foreign markets at lower rates is concerned, not merely do the iron manufacturers, but many others, say that, as has been intimated

above, only by such low prices can they enter the foreign markets at all and dispose of a surplus which, if it had to be sold in the home country, would compel the partial closing of the plants to the great detriment of numbers of laborers, and with the result of increasing decidedly the cost of production.

The iron manufacturers in Austria and Germany and France do not hesitate at all to say that in fixing their prices they practically take the price of the chief competing foreign country and add to that the costs of freight and their own home tariff. They believe that they are justified in so doing. In individual cases, as, for example, that of the iron combinations in Germany, the combination has even found it wise, as did the distillers in the United States under the old Whiskey Pool, to assess themselves in order to pay export premiums to those of their numbers who are selling their surplus stock in the foreign market at a loss.

Beyond much question, in two or three of the European countries at least, the desire to secure somewhat greater power in contests with the labor unions has exerted a noticeable influence toward forming the combinations. Never-

theless, speaking generally, the combinations seem to be ready to recognize trade unions and to deal with them on reasonable terms. In the case of the coal syndicate of Germany, the manager says that in his judgment the leaders of the union believe that the combination has been to their advantage; that it has been so managed as to give the men steady employment at, on the whole, steadily increasing wages; and that it is likely in the future to prevent industrial crises which will lead to more unfavorable conditions for them. They, therefore, are, on the whole, inclined to favor the syndicate. In the case of the Bradford Dyers in England, the workingmen and employers have a joint bureau for the settlement of disputes which may arise, with a fund on both sides to pay damages in case of dispute, and the two classes seem to be working together with mutual respect, and, on the whole, in harmony.

It has already been noted that the E. J. Smith combinations were founded upon an alliance between the workingmen and the employers. Generally speaking, throughout Europe, so far as one can gather, there seems to be little hostility on the part of the laborers toward the

combinations, and so far, indeed, as one can see, there is not in Europe the same degree of hostility on the part of the public toward the concentration of capital that exists in the United States.

It is true that the people in England complain at times of the number of members of Parliament who hold directorships in corporations, but they evidently consider this rather a hint toward political corruption than an attack upon combinations as such; and they do not have any especial fear of the power of monopoly.

In France some of the leaders of the Radicals seem to believe that the government ought to take certain active measures toward investigating the question of combination with the possible thought of protecting the people; but here again those of socialistic tendencies are rather inclined to welcome the drift toward combination as a first step toward state socialism, and do not apparently have any fear of losing personal liberty through such influence.

Similar are the conditions in Austria and Germany. In Austria there has apparently been a somewhat greater feeling of dread and of hostility toward the combinations than in any

other European country. It is possible that here the movement may have been almost as active at times as in the United States. The opponents, however, find it much more difficult to bring about legislation than in the United States, so that comparatively little has been done, and whatever agitation there may have been has been limited largely to editorials and speeches without any very effective results.

In Germany the high price of coal during the last two years has, by many, been ascribed to the coal syndicate, and there has been much bitter complaint. On the other hand, however, those who have looked most closely into the matter—chambers of commerce, members of the government, and others—seem to have reached the conclusion that the increased price of coal is due rather to the extraordinary demand which has come from the present period of prosperity. They call attention to the fact that, although the price has increased, the increase is much less rapid than it was in the seventies and eighties under somewhat similar circumstances, and that as yet, at any rate, the price has not reached so high a point. They note still further that the coal syndicate has

opened new mines, and has increased its output to a greater extent than have the independent coal producers. On the whole, they are rather inclined to give the syndicate the credit of checking an abnormal tendency toward overproduction and speculation, with the danger of a consequent crisis, than to blame it for the course that it has followed.

Questions in the House of Representatives of Prussia and in the Imperial Reichstag have called from the Minister of Commerce words of defence and even of commendation for the syndicate.

With the exception of the coal syndicate, there seems to have been relatively little complaint made in Germany against the combinations.

So far as actual or contemplated legislation is concerned, a little more may perhaps be said. In England, the amendments of the year 1900 to the stock corporation law have been in the direction of enforced publicity to a much greater degree. The earnings of promoters must be laid bare; and the regular profits or losses of the business, if the law is enforced with a reasonable degree of care, may certainly be known

to the stockholders and to the general public. Legislation against combinations as such has not been made, but under the old common law monopolies and contracts in restraint of trade are, of course, forbidden or declared invalid. Nevertheless, the English courts have taken a position somewhat different from that followed by the courts of the United States. They seem rather to be of the opinion that an agreement for the protection of one's own business, even though it may seriously injure competitors, is not to be looked upon as a combination in unreasonable restraint of trade, but rather as a justifiable measure of protection and one that should be considered valid.

In France, the provision of the French Penal Code, which forbids coalitions to raise prices, especially if fraudulent representations are used, has, beyond doubt, had a very deterrent effect toward open agreements on prices. Combinations have either taken the form of single corporations, or, like the Comptoir Métallurgique de Longwy, have organized a selling bureau as an independent establishment which buys and sells the products of the different members, or else, like the sugar combination, they take the

form of an agreement regarding output and allow the prices to be regulated thereby without any formal contract on that subject being made. The drift toward combination in France is unmistakable, but it is very evident that this law has checked the open movement, and has also affected to a considerable degree the form which combinations assume.

In Germany, the courts have upheld, in one or two very striking decisions, the principle that agreements to prevent ruinous competition, and to maintain prices so that there shall be a reasonable return upon capital, are to be considered valid, and that penalties in such agreements in the nature of fines upon those who violate them may be enforced by law. The court in one decision says: "When in a branch of industry the prices of the product fall too low, and the successful conduct of the industry is endangered or made impossible, the crisis setting in as the result of such a state of affairs is detrimental not only to individuals, but also to society as a whole, and it is therefore in the interests of the community that improperly low prices should not exist in a certain branch of industry for a long time. Therefore, it cannot be simply and gen-

erally considered as contrary to the interests of the community when *entrepreneurs* interested in a certain branch of industry unite with the object of preventing or moderating the mutual underselling, and as a result of the latter, the fall of the prices of their products. On the contrary, when prices are for a long time actually so low that financial ruin threatens the *entrepreneurs*, their combination appears to be not merely a legitimate means of self-preservation, but also a measure serving the interests of the community."

In Austria, as has been intimated, the feeling against combinations has been considerably stronger. In 1897 the combinations among brewers, sugar refiners, and others seemed to the government to threaten somewhat the interests of the treasury, inasmuch as if prices should be increased and, in consequence, the consumption should fall off, the tax levied upon those products would be materially lessened. With this thought in mind, the Finance Department proposed a bill placing these combinations whose goods were subject to the consumption tax under the somewhat rigid supervision of the government, and providing that in case un-

reasonable measures were taken, the government might forbid a contract or might give the fullest degree of publicity to all of the business of the combination. Owing in part to the political condition of Austria, in part also, perhaps, to the fact that the law was not more general in its application, nothing further has come of this. Meanwhile the Department of Trade and Industry more than a year ago appointed a special committee to consider the subject of the regulation of the combinations. This committee, after careful discussion of the whole question, has lately handed in its report to the Section for Industry, Manufactures and Trade, and has made the following recommendations:

"(1) That the combinations be recognized as legal organizations, and be put in consequence into legal form.

"(2) That every combination be obliged to record its founding with a combination bureau or court, which shall be given certain judicial powers.

"(3) This combination court should have also the powers of a court of the first instance to settle primarily all controversies at private

law arising in the course of the business of the combination.

"(4) For the checking of any tendency toward monopolistic prices on the part of the combination through its limitation of free competition, measures in the direction of the modification of import duties, and of freight rates on the State railroads, should be taken, as well as measures looking toward the furtherance of unions to oppose the combinations. (Presumably organizations among dealers and others.)

"(5) For the purpose of deliberating and of deciding regarding the measures to be taken by the administration, there should be created a Monopoly and Combination Council, which should be a consultative organ of the Ministry of Trade and Commerce.

"(6) Finally, the government was formally requested on the basis of this report to prepare a bill for a law on combinations to be laid before the Committee on Combinations for consideration."

This so far seems to be the most advanced step taken in any European country regarding restrictive legislation. It seems not at all improbable that, as the result of this careful study

on the part of the government, some legislative measures may be passed within a year or two. It should be noted that the result of this study —and one may say that similar opinions seem to be prevalent also elsewhere in Europe—is that the combinations are not to be set aside, but are to be recognized as normal institutions in modern industry, and are to be restricted only by certain measures on the part of the government, which will prevent abuse of the power which they undoubtedly possess.

APPENDIX

APPENDIX A

FORMULATION OF SUGGESTED METHODS FOR THE SOLUTION OF THE TRUST PROBLEM

By William Wirt Howe,

Permanent Chairman of the Chicago Conference on Trusts

When I came to this meeting as a delegate from the New Orleans Board of Trade, I prepared, at the request of the Civic Federation, a paper on some of the questions here in debate; but when by your kindness I was called to preside over your deliberations, it was deemed more becoming that your chairman should not undertake to express any views on these questions, or undertake, even if I could, to influence any opinion. And so, with a little of that paternal anguish which may have visited the soul of Abraham when he thought himself in conscience bound to sacrifice his son, I suppressed the little paper. The suppression was fortunate, because if the paper were to be written this evening it would be a better one, for the reason that its author has learned a good deal in the last four days.

In what are called courts of conciliation, in some jurisdictions, the constant aim of the presiding magistrate is to note those admissions and concessions of the contending parties themselves which may be found even in apparently hopeless disputes, and to make those admissions and concessions a basis for a judgment substantially just.

Now, following this sensible idea, where do we stand after four days of discussion, always interesting, often profoundly scientific, and sometimes passing into the brilliant sphere of oratory? It seems to me—simply as an individual, of course—that almost every paper or address we have heard has made some admissions or concessions which may form a basis for some conclusions, and if you will allow me I will formulate some of them only, as follows:

1. Combinations and conspiracies in the form of trusts or otherwise in restraint of trade or manufacture, which by the consensus of judicial opinion are unlawful, should so be declared by legislation, with suitable sanctions, and, if possible, by a statute uniform in all jurisdictions, and also uniform as to all persons, and such a statute should be thoroughly enforced, so that those who respect it shall not be at a disadvantage as compared with those who disregard it.

2. That the organization of trading and industrial corporations, whether under general or special laws, be permitted only under a system

of careful governmental control, also uniform, if possible, in all jurisdictions, whereby many of the evils of which complaint is now made may be avoided.

3. The objects of the corporation should be confined within limits definite and certain. The issue of stock and bonds, which has been a matter of so much just criticism and complaint, should be guarded with great strictness. If mortgage bonds seem to be required, they should be allowed only for a moderate fraction of the true cash value of the property that secures them. As for issues of stock, they should be safeguarded in every possible way. They should only be allowed either for the money or for property actually received by the company, and dollar for dollar, and when the property is so conveyed it should be on an honest appraisement of actual value, so that there may be no watering of stock.

4. And finally, there should be a thorough system of reports and governmental inspection, especially as to issues of bonds and stock and the status and value of property, whether corporeal or incorporeal. Yet, at the same time, in the matter of trading and industrial companies, there are legitimate business secrets which must be respected by the general public. In short, we need to frankly recognize the fact that trading and industrial corporations are needed to organize the activities of our country,

and that they are not to be scolded or belied, but controlled, as we control steam and electricity, which are also dangerous, if not carefully managed, but of wonderful usefulness, if rightly harnessed to the car of progress.

APPENDIX B

PRELIMINARY REPORT OF THE INDUSTRIAL COMMISSION

TO THE SENATE AND HOUSE OF REPRESENTATIVES, FIFTY-SIXTH CONGRESS:

The act of June 18, 1898, creating the Industrial Commission, authorizes it to "report from time to time to the Congress of the United States." As the subject of "Trusts," or Industrial Combinations, seemed to be one upon which there was pressing demand for trustworthy information, your Commission gave it early attention. Although we have examined sixty-two witnesses on trust topics, whose testimony is herewith submitted, our inquiry has been limited to eleven of the more prominent, but typical, combinations. This leaves quite a large field for further investigation, but the urgent demand for information leads us to submit what we have in hand at this time. As a result of our investigation of industrial combinations thus far, your Commission are of opinion that certain evils in connection with them should be checked by appropriate legislation. Experience proves

that industrial combinations have become fixtures in our business life. Their power for evil should be destroyed and their means for good preserved. As a result of further investigation on our part, or of further development on the part of the combinations, it may be possible later to propose additional measures for relief without running the risk of increasing the evils. At present we propose the following, which, if severally adopted by the States, or so far as possible by the Federal Government, we are confident will be of great service, and will not endanger business prosperity.

To prevent the organizers of corporations or industrial combinations from deceiving investors and the public, either through suppression of material facts or by making misleading statements, your Commission recommend :

(*a*) That the promoters and organizers of corporations or industrial combinations which look to the public to purchase or deal in their stocks or securities should be required to furnish full details regarding the organization, the property, or services for which stocks or securities are to be issued, amount and kind of same, and all other material information necessary for safe and intelligent investment ;

(*b*) That any prospectus or announcement of any kind soliciting subscriptions, which fails to make full disclosures as aforesaid, or which is false, should be deemed fraudulent, and the

promoters, with their associates, held legally responsible ;

(*c*) That the nature of the business of the corporation or industrial combination, all powers granted to directors and officers thereof, and all limitations upon them or upon the rights or powers of the members, should be required to be expressed in the certificate of incorporation, which instrument should be open to inspection by any investor.

The affairs of a corporation or industrial combination should be carried on, without detriment to the public, in the interest of its members, and under their lawful control. To this end the directors or trustees should be required:

(*a*) To report to the members thereof its financial condition in reasonable detail, verified by a competent auditor, at least once each year;

(*b*) To inform members regarding the method and conduct of business by granting them, under proper restrictions, access to records of directors' meetings, or otherwise ;

(*c*) To provide for the use of members, before the annual meetings, lists of members, with their addresses, and their several holdings; and

(*d*) To provide, in whatever other ways may be named in the certificate of incorporation, means whereby the members may prevent the misuse of their property by directors or trustees.

The larger corporations—the so-called trusts—

should be required to publish annually a properly audited report, showing in reasonable detail their assets and liabilities, with profit or loss; such report and audit under oath to be subject to Government inspection. The purpose of such publicity is to encourage competition when profits become excessive, thus protecting consumers against too high prices and to guard the interests of employees by a knowledge of the financial condition of the business in which they are employed.

From the testimony given before the Commission, and herewith submitted, it has been proved that, before the passage of the Interstate Commerce Act, discriminating freight rates were frequently secured by large shippers. Other evidence herewith submitted, to be supplemented by additional testimony which will be laid before the Congress shortly, seems to show that like discriminating favors are even now granted. Believing that these discriminations clearly tend toward the control of business by large combinations, your Commission further recommend:

(*a*) That the Interstate Commerce Commission be given authority, not only to prescribe the methods of keeping accounts of the railroads and to demand reports in such detail as it may require, but also to inspect and audit said accounts;

(*b*) That the Interstate Commerce Law be so amended as to make the decisions of the

Commission operative at a day fixed in the decisions and until reversed by the United States courts, on appeal;

(*c*) That the Interstate Commerce Commission be authorized to prescribe classifications of freight articles, and to make rules and regulations for freight transportation, throughout the United States; and

(*d*) That penalties for violations of the Interstate Commerce Act should be appropriate fines against the carrier, and not imprisonment of officials.

JAMES H. KYLE, *Chairman.*
BOIES PENROSE.
J. J. GARDNER (as to trusts).
*WM. LORIMER.
L. F. LIVINGSTON.
JNO. C. BELL.
THEO. OTJEN.
LEE MANTLE.
A. L. HARRIS.
ELLISON A. SMYTH.
JOHN M. FARQUHAR.
EUGENE D. CONGER.
THOS. W. PHILLIPS.
C. J. HARRIS.
M. D. RATCHFORD.
JOHN L. KENNEDY.
†ALBERT CLARKE.

* I concur in the recommendations of the

Commission on industrial combinations, but withhold my judgment on transportation corporations until testimony now being compiled by Commission is submitted to Congress, with recommendations.

WM. LORIMER.

† I concur in all, except paragraph marked (*b*), page 238. It seems to me better that rates fixed by Interstate Commerce Commission should not go into effect in case of appeal until affirmed by court, and that trial on appeal should be expedited.

ALBERT CLARKE.

APPENDIX C*

PLAN OF BIRD S. COLER, COMPTROLLER OF NEW YORK CITY, FOR THE REGULATION OF TRUSTS†

Whatever the State creates it should either supervise or control. Government was created for the protection of all and not that the representatives of the people should barter away the public rights and utilities in perpetuity. Every corporation should have a definite period of existence and the right of renewal should rest with the state and not with those in interest. Business that requires secrecy of management and manipulation of securities is not entitled to the protection of the State, and should be refused corporate powers.

No corporation should be allowed to issue securities except for actual value, and these should not be placed upon the public market until the end at least of one actual business year, and then only after public reports by cer-

* The arguments and comments are omitted, as in the other appendixes. The plan is given in full.

† "Congressional Record," Fifty-sixth Congress, first session, v. 33, p. 6,926.

tified accountants under employment of the state and bearing its seal. This to check stock jobbing and to foster legitimate business and investment, and also to provide definite information upon which to base assessment and taxation. . . .

Places of business and location of factories should be named at time of incorporation, and no removal of same should be allowed without consent of the State. . . .

From its beginning the accounts of every corporation obtaining a charter privilege from a State government should be open at all times to examination and regulation by properly appointed public officers. . . .

Chartered companies should be compelled to confine their investments and development to the legal and proper conduct of the business for which they were created and for the prosecution of which they have received from the government special privileges and powers. . . .

Uniform laws compelling publicity of important matters of management, frequent examinations by State officials prescribing honest systems of keeping accounts, and such other restrictions as exigencies may require for the good of all, including the protection of such communities as have been built up by the establishment of business concerns and the forbidding of their abandonment without the consent of the State authorities and for adequate reasons shown,

should be immediately enacted throughout the Union. . . .

The sovereign State has the power to grant charter privileges for purposes that are in consonance with the general welfare and not in violation of the constitutional rights of the individual. The power of regulation is implied in the act of creation.

The abuse of the privileges derived from the people by these favored combines merits severe punishment, and necessary legislation for such purpose is clearly within the scope of the legislative power of the State. The opinion that Congress is powerless to remedy this evil without constitutional change is generally conceded, but the right of the sovereign State in the premises is unquestioned.

The different sections of our country, having varying industries, such as cotton and its products in the South, know best how to control them.

APPENDIX D

THE PROPOSED NEW YORK BUSINESS COMPANIES' ACT *

Powers and Purposes

Under the title, Powers and Purposes, the usual provisions regarding legal standing and

* This bill, which was framed to carry out the suggestions in Governor Roosevelt's annual message sent to the Legislature, January, 1900, was in form a complete Business Corporation Law. It was intended not to repeal the present law, but to provide an alternative law under which corporations that wished to do so might organize and act; others might act under the present law.

As will be seen, the proposed act gives much greater privileges to corporations in many particulars than does the present law. In other respects, especially as regards publicity of accounts and of business methods, the responsibility of directors, etc., it is much more rigid. Corporations of the highest type as regards financial stability and management, having nothing to conceal for which the bill calls, might well wish to organize under it to give them standing as well as to secure its privileges. Speculative corporations could not well do so. The line would thus be drawn between the two classes, to the manifest advantages of investors and of the public.

The provisions giving privileges to sound corporations under proper restrictions were largely suggested by James B. Dill, Esq., of the New York Bar, author of "Dill On New Jersey Corporations," and they are to a considerable extent modelled after the New Jersey laws with additional safeguards for the public interests. The provisions regarding Promotion, Auditing, and the Annual Report are taken largely from the Corporation Laws of Victoria, modelled after those of England. All the provisions of the bill were submitted to many persons qualified to criticise them—corporation lawyers, professors of corporation law, lawyers with no interest in corporations, prominent business men, chartered accountants, and others—and valuable suggestions were received from all, the effort being made to make the act as rigid regarding publicity as it could be made without endangering the interests of sound business. It is believed that the enforcement of such a law would gradually do away with a large part of the evils of the Trusts.

acts are made, and the following special ones are added:

To acquire by grant, gift, purchase, devise or bequest, to hold, use, mortgage, pledge, and to dispose of any property, real or personal, and any rights or claims thereupon, therein or thereto, by any legal title to the same extent that a natural person might or could do.

To contract, incur obligations and bind others in its favor to the same extent and in the same manner that a natural person might do.*

It may exercise the same powers outside the State of its origin as within it, subject always to the laws of the State in which it is doing business, but no corporation shall possess or exercise the above mentioned or any other corporate powers, except such incidental powers as shall be necessary to the exercise of its powers above mentioned, unless they are contained in the certificate of incorporation.

Corporations are forbidden to do banking or insurance business, or to take names implying such powers; but they may be formed to act as registration companies under this act.

As the author of this book took the final responsibility of the acceptance or rejection of all suggestions made in its preparation, he has felt at liberty to make changes in the parts here reprinted and to add some brief explanatory notes. The only parts of the bill printed are those that are not found in the Corporation Laws of New York, or those that are needed to show the spirit of the act. The most important provisions are printed in full.

* It will be observed that large powers are conferred; but these powers must be fully declared in the certificate of incorporation, and very rigid provisions to prevent abuses are made.

Registered Office and Agent *

Every corporation organized under this act shall have and keep continuously a registered office in this State, and an agent in charge thereof, which agent must sign the certificate of incorporation. The name of the corporation shall be conspicuously displayed at the entrance to such office, and the address of the office shall be printed upon all letter heads used by the corporation. This office must be kept open regularly during ordinary business hours and the agent must be present to perform the duties required.

In the registered office in charge of its registered agent must be kept the stock book and a transfer book of the corporation, written up to date, open to the inspection of all bona fide stockholders, and ready to be used for the transfer of stock. These books must show at all times all transfers and stockholdings.

The name of the registration agent, and the office address shall appear in all reports of the corporation; otherwise they will not be received by the State officers.

Every registered agent shall, during the

* The provisions regarding a registration office and agent will enable any person who has a right to know, to secure regularly and easily any information needed, and will enable the State much more readily to enforce its restrictive regulations. This provision is from the New Jersey law, with additional regulations.

month of April of each year, file a statement * as of the first of April, under oath, with the Secretary of State of New York, which shall specify:

1. The names of the corporations for which he is the registered agent.

2. Whether such corporations have or have not made their annual report.

3. Whether the names of these corporations have been at all times displayed before their registered office.

4. Whether the provisions rega ding the keeping and inspection of stock and transfer books have been fully complied with.

Such report shall be verified by the agent as true to the best of his knowledge and information and belief, and shall be in such form as the Secretary of State shall prescribe, and on such blanks as the Secretary of State may furnish. No fee shall be charged for filing such report.

For failure to file said statement, the registered agent shall be liable for a penalty in the sum of one hundred dollars, to be sued for and recovered by the Attorney General or other officer designated by him, or by the district attorney of the county in which the registered office is located.

* This provision is entirely new, and is intended to aid in securing proper annual reports.

Certificate of Incorporation *

The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein and by the registered agent.

The certificate of incorporation shall contain:

1. The name of the company, which shall not be the same as that of any other company registered in this State or likely to be misunderstood therefor.

2. The location, town or city, street or number, if there be number, of its registered office in this State.

3. The name of the agent therein and in charge thereof and upon whom process against the corporation may be served, in accordance with the provisions of this act.

4. The principal purpose or purposes for which the company may be formed, and such subsidiary purposes and special powers in connection with the principal purpose or purposes as the incorporators may see fit to insert therein, in accordance with the provisions of this act.

* It was thought wise to encourage the formation of corporations wishing to do a sound conservative business, and through publicity to discourage the purely speculative ones. The full statements required in the certificate of incorporation, which is accessible to any person, would in very many cases make clear to investors and the public the nature of the business and the protection afforded shareholders, and would warn careful people against risks.

5. The amount of the total authorized capital stock of the corporation, which shall not be less than one thousand dollars.

6. The number of shares into which the same is divided, and the par value of each share, to be not less than ten dollars nor more than one thousand dollars.

7. The amount of capital stock which is subscribed by the incorporators, which shall not be less than one thousand dollars in all, nor less than one share for any one.

8. If there be more than one class of stock, a description of the respective classes with the terms upon which the respective classes are created.

9. The names and post office addresses of the incorporators, not the registered office, and the number of shares subscribed by each, together with the designation of the kind of shares subscribed.

10. The period of duration of the company, limited or unlimited.

The certificate of incorporation may contain any provision not inconsistent with this act, which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and must contain all the provisions creating, defining, limiting and regulating the powers of the company, the directors and stockholders, and of any class or classes of stockholders, or any

right or rights of specific stockholders. No provision creating, defining, differentiating, limiting and regulating the powers of the corporation, the directors, the stockholders, or any class or classes of stockholders, shall be valid unless inserted in the certificate of incorporation or in an amendment thereof.

The certificate of incorporation must be executed by natural male persons who must be of full age, but without restriction as to nationality, citizenship, or residence.

The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and filed in the office of the Secretary of State. Said certificate or a copy thereof duly certified by the Secretary of State shall be evidence in all courts and places. A copy of the certificate must also be kept in the registered office of the company, and a copy must be furnished by the registered agent to any person demanding the same. on payment of a charge of not more than one dollar.

Incorporation Fees *

On filing the certificate of incorporation the incorporators shall pay the Secretary of State suitable fees for the use of the State.

* These fees are placed at the rates now paid in New Jersey.

New York Companies' Act

Amendment of Certificate *

Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its registered office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in the general manner provided in the New Jersey law, except that it is provided, that such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment; and provided further that in case the corporation by such amendment proposes to undertake business which is not of the same general character as that provided in the original certificate, or creates one or more new classes of stock, or gives to certain classes of stock or bonds new privileges, or increases the amount of the capital stock, a vote of four-fifths of each class shall be required, and any dissenting stockholder may declare his dissent

* While the interests of minority stockholders have been fully protected by requiring a four-fifths vote and the purchase for cash at an appraised valuation of the stock of dissenting stockholders, it is recognized that a few ought not to be permitted to block the plans of a large majority.

in writing at the meeting called for the purpose of amendment, and may sell to the company and the company shall buy for cash his holdings of stock at a valuation appraised in the manner provided for dissenting stockholders in case of merger or consolidation of companies. If such dissent is declared in writing at the meeting, the subsequent proceedings for appraisement and purchase may be enforced at the instance of either party.

Reincorporation under Act *

Any company in this State or any foreign corporation, whether organized under special charter or under a general law, which would be qualified to organize under this act, may, by complying with the procedure in the foregoing section, and stating also the facts, and giving the information necessary to be contained in an original certificate of incorporation under this act, be registered and incorporated under this act, and from the date of filing said certificate, this act shall apply. A domestic corporation reorganizing under this act will be exempt from payment of incorporation fees.

* The intention was to encourage foreign corporations, wishing to do a conservative business, and domestic corporations of like character, to reincorporate under this Act. This section would make the process a very simple one.

New York Companies' Act

*Act Optional**

All companies existing at the coming into force of this act, and all companies hereafter organized under the present business corporation laws, unless they elect to put themselves under the provisions of this act in the manner prescribed in the preceding sections, shall remain subject to the other corporation laws relating to them, as if this act had not been passed.

Directors

No by-laws adopted by the board of directors regulating the election of directors or officers shall be valid, unless a copy thereof shall be delivered or mailed to each stockholder of record at least thirty days before such election.

Every stockholder shall be entitled to receive, and every corporation by its officers and board of directors shall be bound to furnish any stockholder upon request, at the expense of the corporation, a copy of the certificate of incorporation and of the by-laws.

Any corporation organized under this act may classify its directors in respect to the time for

* The act was to be an optional one. A radical revision of a general corporation act, without due warning, could not fail to work injustice in many cases. A good law which should encourage sound business would throw discredit upon unsound methods. Later, other acts might, with due warning, be repealed.

which they may hold office, the several classes, however, to be, as nearly as is numerically possible, equal in number and elected for different terms. Provided,

1. That no class shall be elected for a period shorter than one year except at the first election, for the first year, or for more than five years, and

2. That the term of office of at least one class shall expire each year.

Any corporation which shall have more than one kind of stock, by making suitable provision in its certificate of incorporation, may confer the right to choose the directors upon the stockholders of any class or classes, or upon the bondholders, to the exclusion of others, subject, in case this power is granted by amendment, to the right of minority stockholders provided in the previous section regarding amendments to the certificate of incorporation.*

Duties of Directors Regarding Elections

No stock shall be voted on at any election which has been transferred on the books of the corporation within twenty days preceding such election; nor shall any stock which has been

* Through the classification of directors, incorporators at times extend their power through a long series of years. These provisions, it is thought, would prevent many such abuses, while retaining the benefits of classification.

issued, whether original or otherwise, within twenty days of the said election, be voted upon.

The directors of every company organized under this act shall cause the registered agent, or other transfer agent designated by them as having charge of the said books, to make, at least ten days before every election after the first election, a full, true and complete list, arranged in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the post office addresses, not the registered office of the corporation, of each, and the number of shares of each kind of stock held by each, which list shall, at all times during the usual business hours, be kept at such registered office open to examination by any stockholder.

The board of directors shall produce at the time and place of every election of directors, such books and such list, there to remain during the election. A copy of such list shall be mailed to any stockholder within five days after his request is received, upon payment in advance of cost of copying at not over ten cents per folio of one hundred words.

The neglect or failure of the said directors of a corporation with a capital stock of five hundred thousand dollars or upwards to cause the said books so to be kept, or to cause the said list to be so made and filed, or to produce the said books or said list at the time of any election, shall render them ineligible to hold office as

directors, or any other office in the company for the period of one year thereafter.* In addition to the penalty above named for failure the sum of one hundred dollars each may be collected from any or all of the directors at the suit of any stockholder, for his own use. Delinquent directors of corporations with a capital stock of less than five hundred thousand dollars shall be subject to the last named penalty only.

Officers †

Besides the usual officers an auditor or auditors shall be chosen by ballot by the stockholders at their annual meeting, and no person or firm or corporation, a member, director or officer of which is a director of the company to be audited shall be eligible. Corporations organized under this act with a capital stock of one hundred thousand dollars or upwards, must select as auditor or auditors a person, firm or corporation duly qualified and engaged in the practice of public accounting and auditing in this state. And the auditor or auditors selected

* This penalty was introduced in 1900 into the Corporation Law of New Jersey, and has already proved very effective in preventing negligence in carrying out the provisions of that law.

† The provisions regarding auditors are intended to protect shareholders against misuse of power by directors. Every effort is made to identify the interests of auditors and shareholders. The provisions regarding bonds of auditors will make their responsibility a real one. The further provisions regarding officers are likewise needed to hold them responsible to shareholders.

by a corporation whose capital stock amounts in all to one million dollars or more must have his or their financial responsibility secured by a bond of fifty thousand dollars of some surety company authorized to do business under the insurance laws of this state ; and for a corporation whose capital stock is less than one million dollars by a bond amounting to at least five per centum of the capital stock and approved by the shareholders either at a meeting, or through a committee selected for this purpose. The above provisions regarding bonds may be waived by the written consent of every shareholder.

Corporations with five hundred thousand dollars capital stock or upwards must appoint a general counsel, who shall be counted in the list of officers.

Any stockholder shall be entitled upon payment of cost of copying at not over ten cents a folio of one hundred words, to a statement at any time of all salaries paid to any officer or officers of the corporation, together with a statement of all contracts or agreements in which any officer of the corporation may be interested either as a contracting party with the corporation or as an officer or stockholder in any other corporation contracting with the company.

The salaries of the officers shall be fixed at the annual meeting unless the articles of incorporation provide otherwise. In case, however, salaries shall be increased at any time by the

board of directors under provision of the articles of incorporation, report thereof must be made at the next annual meeting to the stockholders and laid before them for ratification. Their action shall be conclusive in all particulars.

If the number of directors is increased between annual meetings, or by the directors, the places must be filled by vote of the shareholders.

If any certificate made, or any public notice given by the officers or directors of any corporation in pursuance of the provisions of this act, shall be false in any material representation, all the officers or directors who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were directors or officers thereof, as a penalty enforceable in the courts of this state only.

Meetings

The first meeting and the annual meetings of stockholders must be held at the registered office; directors' meetings may be held elsewhere.

At the regular annual meeting, for which provision must be made in the certificate of incorporation or in the by-laws, the shareholders' balance sheet prepared and certified by the auditors as provided later must be presented to the

shareholders. If the directors or other officers of any corporation organized under this act shall fail or neglect to call in the manner provided by law the annual stockholders' meeting at the time appointed in the certificate of incorporation or in the by-laws and shall not hold the same accordingly thereupon, from the time when said meeting was appointed to be held until the meeting shall actually be held thereafter, all salaries of president, vice-presidents, secretary, treasurer, and directors shall cease and determine, and it shall be unlawful for any corporation or its officers or directors to pay directly or indirectly any salary or compensation to any of the above-named officers or to any director for services rendered in the interim.

At the annual meeting any shareholder shall be entitled to require from the company, and the directors shall be bound to furnish him with a copy of all or any parts of the directors' records of meetings.

Stock and Certificates

If provided in the articles of incorporation, preferred and common stock may be issued; but liability of holders of all classes is limited to the payment for the stock itself at par value. Bondholders may be given voting powers equal to those of stockholders.

Every stockholder shall be entitled to receive a certificate of stock signed by two officers of the corporation. Every certificate of stock and every bond shall specify the amount of capital stock authorized to be issued by said corporation, the amount of each class, if there is more than one class, also the amount of each class issued for cash and for other consideration, the par value of each share, and the location of the registered office of the company, and shall disclose fully and fairly any qualification or restriction contained in the certificate of incorporation affecting the right of the stockholder, or in case of bonds of the bondholder, by way of voting power or otherwise.*

Any corporation or individual countersigning the said stock or bonds, either as transfer agent or as registrar of the stock, shall be deemed to guarantee the legality and regularity in all particulars of the transfer, unless the countersign itself shall give notice in clearly legible characters that said countersigning agent limits or refuses responsibility.

Every share of stock shall be deemed to be issued and shall be held subject to the payment of its par value in cash, unless before the issuance of said stock a contract shall be filed in the registered office of the company which shall truly and fully disclose in detail the considera-

* A new provision. It will be noted that the certificate gives each investor full information regarding his rights.

tion for which the said stock is issued, whether the same be for property, services or otherwise.

In case any stock is issued for consideration other than cash, every share of stock shall have stamped across its face a statement that stock has been issued in accordance with a contract filed in the registered office and the proportion of shares of each class so issued.

Every such contract so filed in the registered office shall truly and fully disclose the consideration for which said stock is issued, the parties to whom such stock is issued, and the real parties in interest. Such contract shall be open during regular office hours to the inspection of any one and a copy thereof shall be furnished by the registered agent of the corporation to any one requesting it and advancing the cost of making a copy thereof, which cost shall not exceed the sum of ten cents per folio of one hundred words.

In every annual report made by the company, the amount of capital paid in cash and the amount otherwise issued in pursuance of the provisions of the foregoing sections shall be stated, together with the specific amounts issued during the two years next preceding.*

The judgment of the board of directors as to the value of the consideration other than cash

* This provision is substantially that of the law of Victoria and in substance has been adopted by the new amendment of 1900 to the English Act. If even fairly enforced, it will largely destroy the power of the dishonest promoter and director.

thus received by the company shall be final and conclusive upon all parties, provided, that all the provisions of this act relating thereto be fully carried out, and that the contracts fairly and fully disclose the real nature of the bargain thus recorded.*

Where the whole capital of the corporation shall not have been paid in, and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

No loan of money shall be made to any stockholder to enable such stockholder to withdraw in effect any part of the money paid in by him on his stock;† and if any such loan be made, the officers who make it or assent to it shall be jointly and severally liable to the extent of such loan and interest for all the debts of the

* The limitation of liability of shareholders and the acceptance of the judgment of directors as to values of property are very liberal provisions. Under present laws the practice is much the same as it would seem to be under this bill so far as stock-watering goes, but the provisions of this bill regarding publicity would largely remove the temptation to water stock and would render the practice innocuous if it were continued. Moreover, when there is danger arising from a failure of judgment or a misunderstanding on the part of directors, the more conservative and conscientious men often refuse such positions, thus putting the management of our corporations into the hands of the reckless and unscrupulous. This bill tries to recognize actual business conditions, and not to put penalties upon honesty.

† A not uncommon practice now.

corporation until the repayment with interest of the sum so loaned.

Penalty for Delinquent Officials

The president and secretary, or treasurer, upon the payment of the amount of capital subscribed in the certificate of incorporation, whether up to the amount authorized by its certificate or in addition thereto, if increased in the manner provided by this act, shall make a certificate stating, in addition to the requirements of section eighteen of this act, the amount of capital so paid, whether paid in cash or otherwise; the total amount of capital, if any, previously paid in and reported, with the date of such report, and also stating with regard to any such additional stock thus issued for consideration otherwise than cash, the date of filing the contract determining such issue. This certificate shall be signed and sworn to by the president and secretary or treasurer, and the directors shall, within ten days, cause the certificate to be filed in the office of the Secretary of State and a copy thereof in the registered office of the company. In case of their failure so to do, the directors of the company whose terms shall expire at the next annual election shall each and all be disqualified for a period of one year from being elected or serving as directors or officers

of the corporation; but a director may avoid the penalty by showing his efforts to have the certificate filed and furnishing the information.

If any of the said officers or directors shall neglect or refuse to perform the duties required of them in section seventy-five for ten days after being requested in writing so to do by any creditor or stockholder of the corporation, the directors so neglecting or refusing shall be jointly or severally liable for all the debts of the company contracted before the filing of such certificate and until the same shall be filed.

Powers of Corporation to Buy and Sell Stock

Any corporation, if proper provision is made in the certificate of corporation, shall have the power to purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock or securities of other corporations, and, while the owner thereof, to vote upon them to the same extent as natural persons might or could do.

Every corporation shall have the power to purchase or otherwise acquire its own capital stock, but only out of its surplus earnings or in payment or satisfaction of any debt due the company to such extent and manner and upon such terms as the board of directors by two-thirds vote shall determine, and to reissue the

said stock so acquired. Any such purchase or reissue of stock together with price and consideration paid and for which the reissued stock is sold shall be noted in the annual report.*

Dividends

The provisions for the payment of dividends are the usual ones providing that they must be paid only from profits, and holding directors liable for misuse of power.

Promotion †

Every prospectus, announcement, or advertisement of whatever kind, howsoever published, printed, circulated, or issued after the commencement of this act, provided the same is published or issued with a view of obtaining subscriptions for shares or bonds in a company organized under this act, or directly or indirectly

* These provisions have been thought dangerous. They might be so, if it were not for other provisions of the act regarding publicity and the power of stockholders to know and control the acts of directors. With those provisions the danger is removed, and these provisions become a safeguard against speculative or ill-disposed stockholders.

† These rigid provisions regarding promotion and auditing are no more than are required in some other countries. The forms for reports have been passed upon by competent auditors, and all agree that no conservative, well-managed company can properly object to such reports going to stockholders. No proper business secrets are disclosed. A sound company, and a promoter who is not primarily a speculator, will rarely be injured by any of these provisions, while the provisions are needed to block evil practices which are now working grave injury to sound business.

inviting persons to subscribe for shares or bonds in a company so organized shall specify:

1. The names and addresses of the promoters and directors and the number of shares held or agreed to be taken up by them respectively and whether wholly paid up or partly paid up and the consideration, remuneration, or reward, if any, to the incorporators, directors, promoters, underwriters or others respectively for becoming incorporators, directors, promoters, underwriters or members of the company;

2. The date and the names of the parties to any contract directly or indirectly relating to the company or to the promotion thereof entered into by the company or the promoters, directors, or trustees thereof or any person acting as a trustee or agent for or on behalf of them or any of them, and whether such contract be entered into with the promoters or directors or any of them or any other person whomsoever within two years before the issue of such prospectus whether subject to adoption by the directors of the company or otherwise, and shall also state a place where such contract if in writing may be inspected, which place must be the registered office of the company, if that is yet organized, provided that this subdivision of this section shall not apply to a contract entered into by the company after its incorporation in the ordinary course of the business carried on by the company, unless stock or

bonds are issued or to be issued as a consideration;

3. The contents of the articles of incorporation, if any, with the names and addresses of the subscribers thereto and the number of shares subscribed for by them respectively, together with the number of shares fixed as the qualification of a director.

4. The consideration paid or to be paid, and if so, how and when, for any property purchased or acquired or to be purchased or acquired by the company and from whom and when purchased or acquired, with a brief description of the nature of the property and its location if physical property, and whether any part and if so, how much of such consideration money is for good will;

5. The amount, if any, payable as commission, bonus or reward for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for or for underwriting or guaranteeing the sale of any shares in the company or the rate of any such commission.

6. The minimum subscription upon which the directors will allot the shares subscribed, and begin business;

7. The minimum amount payable on application and allotment on each share;

8. The number and amount of shares issued or agreed to be issued as fully or partly paid up otherwise than in money, and in the latter case

the extent to which they are so paid up, and in either case the consideration for which and the person or persons to whom such shares have been issued or are proposed or intended to be issued;

9. The names and addresses of the vendors of any property purchased or acquired by the company or to be so purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of publication of the prospectus and where there is more than one vendor or the company is a sub-purchaser, the amount payable in money or shares to each vendor;

10. The amount or estimated amount of preliminary expenses;

11. The amount paid or intended to be paid in cash or shares or otherwise, to or for any promoter and the consideration therefor;

12. The amount intended to be reserved for working capital;

13. The proposed application of the proceeds of the issue of the shares; and

14. The names and addresses of the auditors or intended auditors, if any, of the company.

A prospectus which does not comply with the preceding section shall be deemed to be fraudulent on the part of the responsible parties knowingly issuing the same.*

* Parties are fully defined in bill.

Every person taking shares on the faith of such prospectus unless he had actual notice of the particulars omitted from the prospectus shall, in addition to any other remedy he may have, be entitled to sue for rescission of his contract to take shares.

In the event of non-compliance with any of the requirements of this act with respect to a prospectus, any person aggrieved shall be entitled to compensation from any person knowingly issuing the same, unless in ways enumerated in the act he can fully exonerate himself. Provisions are fully made also to prevent fraud through the acts of irresponsible persons acting as virtual agents.

This section shall not apply to a circular or notice issued to and inviting only existing members of a company to subscribe for further shares, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently; provided that

1. The requirements as to the certificate of incorporation and the qualification of directors, the names and addresses of directors and the shares held or to be taken by them, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus published more than one year after the formation of the company; and

2. In the case of a prospectus published

more than one year after the formation of a company, the obligation to disclose all material contracts and facts shall be limited to a period of one year immediately preceding the publication of the prospectus.

For the purpose of this act every contract and fact is material which would influence the judgment of a prudent investor in determining whether he would subscribe for the shares offered by the prospectus.

Any condition requiring an applicant for shares to waive, and any agreement to waive, due compliance with this act or purporting to affect him with notice of any document or matter not specifically referred to in the prospectus shall be void.

Every promoter is in a fiduciary relation toward a company which he is engaged in promoting, and consequently he must make full disclosure as provided in the bill of his relations to and dealings with the company.

Balance Sheet *

Every company and the directors and managers thereof—

* It will be observed that this balance sheet is not published, but is given to the shareholders. Of course, in the case of large companies whose stocks are on the stock market, this is equivalent to publication; while a small private corporation with but few members would be able to confine knowledge of its affairs to its few stockholders and the proper officers of the state.

1. Shall cause to be kept proper books of account in which shall be kept full, true and complete accounts of the affairs and transactions of the company, and

2. Shall once at least in each year cause the accounts of the company to be balanced and a balance-sheet in this act referred to as the shareholders' balance-sheet to be prepared, which balance-sheet after being duly audited shall be laid before the members of the company in next general meeting; and

3. Shall cause a copy of such shareholders' balance-sheet so audited to be sent to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company and a copy to be deposited at the registered office of the company for the inspection of the members of the company during a period of at least seven days before that meeting, and every shareholder in the company or any person acting in his behalf shall be entitled to other copies thereof on payment of twenty-five cents each.

The shareholders' balance-sheet shall be in such form as is directed by the certificate of incorporation or the by-laws or by a resolution of the company and shall show in every case—

1. The amount of share capital authorized, the amount issued, and the amount paid up thereon, distinguishing the amount of share capital paid up in money and the amount paid

otherwise than in money, with statement of nature of the consideration and the arrears of calls due, and the specific amounts issued during the two years next preceding;

2. The amount of debts due by the company, specifying the security if any, allocated for each debt and distinguishing the amount of mortgages, debentures, and floating charges against the general assets of the company, the amount of the reserve fund, if any, and the amount of any contingent liabilities.

3. The amount of all current assets, after making a proper deduction for debts considered to be bad or doubtful; any debts due from directors or other officers to be separately stated.

4. Whether the assets other than debts due to the company are taken at cost price or by valuation, or on what other basis they are reckoned, and whether any and if so what amount of percentage has been written off and what other provision, if any, has been made for depreciation.

5. The gross amount of the year's earnings, the deductions made from the same for fixed charges of interest and taxes and the surplus, if any, available for dividends.

6. The amount by which the gross value of the assets of the company has been increased since the last balance-sheet in consequence of any increase in the valuation of real or personal property belonging to the company.

7. The amount of property, if any, for which shares were issued, which has been sold since the last report with a full disclosure of the consideration therefor in detail, the parties to the contract and the real parties in interest.

The shareholders' balance-sheet shall be accompanied by a certificate signed by two or more of the directors on behalf of the board stating that in their opinion the balance-sheet is drawn up so as to exhibit a correct view of the state of the company's affairs and that in their opinion the statement is correct.

A copy of the balance-sheet shall be sent to each director at least ten days before the annual meeting, and unless he formally at or before the meeting makes statement to the contrary, he shall be held to have also signed the report.

Duties of Auditors

The auditors of every company:

1. Shall use reasonable diligence with the view of ascertaining that the books of the company have been properly kept and record correctly the affairs and transactions of the company;

2. Shall examine the shareholders' balance-sheet and any accounts presented to the members of the company, and shall report in writing to the members of the company when the balance-

sheet is transmitted, that the balance-sheet and accounts have been drawn up in accordance with the provisions of the New York Companies' Act, and when taken together with any explanations attached thereto, present a correct view of the state of the company's affairs; or if the auditors are unable to make such a report they shall report in writing when the balance-sheet is transmitted in what respects the balance-sheet and accounts fail to comply with these requirements, and shall sign a certificate at the foot of the balance-sheet stating whether or not all their requisitions as auditors, including their requisitions with regard to the private balance-sheet hereinafter mentioned, have been complied with; and

3. Shall report in writing to the members all material information which they have observed or have become acquainted with with regard to the books, accounts, securities, vouchers, papers, writings and documents examined by them, and for this purpose they shall at all times have access to all the books, accounts, and records of the company and to the minute book and shall be empowered to require from the directors and other officers such information and explanation as may be necessary for the performance of their duties.

If for any reason it prove impossible for the auditors to prepare their report before the date mentioned above, then they shall submit at the general meeting the reasons for their failure.

The shareholders shall then take action and fix a later date at which a report shall be submitted either by the said auditors or by their successors in office.

If the auditors or any one of them think there is just cause to disapprove of any part of the said accounts presented to the members of the company, they or any one of them may disallow any part of the said accounts so disapproved of and shall report their or his disapproval in writing on the accounts and balance-sheet.

Every such report and balance-sheet shall be read before the company at the next general meeting.

Any auditor who shall wilfully or through gross negligence certify that any false or fraudulent balance-sheet or account is correct, shall be civilly responsible to any party injured.

Private Balance Sheet

The auditors of every company before making a report pursuant to the last preceding section shall require, and the directors and president of the company shall without unnecessary delay supply to the auditors, a balance-sheet, in this act referred to as the private balance-sheet, giving the details on which the shareholders' balance-sheet is founded and showing amongst

other things the amount of deduction, if any, for debts considered to be bad or doubtful.

The private balance-sheet must be signed by the president, treasurer, and by at least two of the directors of the company when there are not more than three directors, and by three at least when there are more than three directors.

The auditors may require the directors, treasurer, and president of the company to supply in writing, signed as hereinbefore provided, any further details or information affecting the balance-sheet or any particular item comprised therein, and shall sign a certificate at the foot of the private balance-sheet stating whether or not all their requisitions as auditors have been complied with.

The private balance-sheet shall not be issued to the members of the company, but shall together with all such further details and information as aforesaid be kept by the directors as part of the records of the company.

Annual Report

Every corporation organized under this act shall annually file in the office of the Secretary of State for use of the Comptroller and other state officials acting in their official capacity, but not for public inspection, and also in the registered

office of the company, a report, which said report shall be at all times open to the inspection of the stockholders, upon request, and a copy of such report shall be furnished to any stockholder by the corporation upon the pre-payment of a reasonable charge for making the same, which charge shall not exceed the sum of ten cents per folio of one hundred words.

Said report shall be filed within three months after the first of January in each year; shall be authenticated by the signatures of the president and one other officer of the company, or by any two directors and shall contain:

1. The name of the corporation.
2. The location, town or city, with street and number, if any there be, of its registered office, with the name of the registered agent.
3. The names of all the directors and officers of the company and the date of the expiration of their terms of office.
4. The post office address of each, not the registered office of the company.
5. The character of the business carried on by the company.
6. The location of any and all transfer offices within and outside the state.
7. The last shareholders' balance-sheet.
8. The day appointed for the next annual meeting of the stockholders for the election of directors.

For failure to file the annual report the cor-

poration shall forfeit $300, and—besides what is far more important—

If such report be not so made and filed before the time appointed for the holding of the next annual election by the stockholders, all of the directors of any such domestic corporation in office during the default shall at the time appointed for the next election, and for a period of one year thereafter, be thereby rendered ineligible for election or appointment to any office in the company as directors or otherwise.

But provision is made to exempt a director who is not at fault, and who makes personally, so far as possible such a report.

The Secretary of State shall upon application furnish blanks in proper form and shall safely keep in his office all such statements, and issue to the corporations filing the same his certificate therefor.

Merger and Dissolution

Corporations may be merged; but only on vote of two-thirds of the stock of each corporation, and any dissenting stockholder is to have his stock taken for cash at an appraised valuation.

Provision is made for voluntary dissolution of corporations.

Monopoly Act not Repealed

Nothing in this act shall be construed to repeal any of the provisions of the existing laws of this State regarding monopoly or the formation of monopolies.

APPENDIX E

SUMMARY OF PLAN OF WILLIAM JENNINGS BRYAN FOR THE REGULATION OF TRUSTS*

Congress should pass a law providing that no corporation organized in any state should do business outside of the state in which it is organized until it receives from some power created by Congress a license authorizing it to do business outside of its own state. Now, if the corporation must come to this body created by Congress to secure permission to do business outside of the state, then the license can be granted upon conditions which will, in the first place, prevent the watering of stock; in the second place, prevent monopoly in any branch of business, and, third, provide for publicity as to all of the transactions and business of the corporation. . . . And then provide that if the law is violated the license can be revoked. . . .

If you once establish the system and require the license, then Congress can, from year to year, add such new conditions as may be necessary for the protection of the public from

* Report of Chicago Conference on Trusts, pp. 506, 508.

the greed and avarice of great aggregations of wealth. I do not go so far as some do and say that there shall be no private corporations, but I say this, that a corporation is created by law, that it is created for the public good, and that it should never be permitted to do a thing that is injurious to the public, and that if any corporation enjoys any privileges to-day which are hurtful to the public, those privileges ought to be withdrawn from it. In other words, I am willing that we should first see whether we can preserve the benefits of the corporation and take from it its possibilities for harm.

APPENDIX F

THE UNITED STATES STEEL CORPORATION

Since the first edition of this book was published, the United States Steel Corporation has been organized. As this is by far the largest and in many ways the most important industrial combination yet formed, a few facts regarding it will be of value.

It was organized February 23, 1901, in the first place with the nominal capital of $3,100, which was shortly thereafter increased to $1,100,000,000, of which authorized capital stock $550,000,000 was preferred and $550,000,000 common stock. The charter is drawn in the broad terms of the New Jersey charters, the special purpose named being the manufacture of iron, steel, and other materials, with the right to do practically everything else which can be brought into connection with that work.

To avoid some of the difficulties met with by earlier large corporations, it is provided that whenever all quarterly dividends accrued upon the preferred stock for previous quarters shall have been paid, the board of directors may

declare dividends on the common stock out of any remaining surplus of net profits.

An act of the legislature of the State of New Jersey passed March 22, 1901, was, it was supposed, passed at the instance of the promoters of this corporation, in order to enable them to manage the affairs of so great a body without being hampered by the possible difficulties of getting a large meeting of stockholders. The new provision of the law provides that "any action which theretofore required the consent of the holders of two-thirds of the stock, at any meeting after notice to them given, or required their consent in writing, to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy." Whether such a liberalizing provision would be safe in case of all corporations may perhaps be questioned.

In form this corporation resembles that of the Federal Steel Company already explained in Chapter VII. The United States Steel Corporation has bought the stock of its different constituent companies, and controls these companies by virtue of being practically the single stockholder in each case. The rates at which the stock of the various constituent companies was exchanged for that of the United States Steel Corporation, together with the amounts and increase of stock of both kinds, appear in

the following table, taken from the review of evidence in the report of the United States Industrial Commission on trusts and industrial combinations. It will be noted that at first seven companies entered the combination, and that two others were thereafter acquired. It will also be noted from the last paragraph given with this table, in connection with the Carnegie Company, that a large surplus seems to be left in the hands of interested parties to acquire other properties.

Comparison of stocks of first constituent members of United States Steel Corporation and shares given in exchange therefor:

(From circular letters issued by J. P. Morgan & Co., and figures verified by officials of United States Steel Corporation.)

Name of Company.	Amount of stock outstanding.	Number shares stock new company for every 100 shares old stock.		Amount of new stock required to make the exchange.	
		Pref.	Com.	Preferred.	Common.
Federal Steel Co.:					
Preferred.....	$53,260,900	110	....	$58,586,990	.....
Common.....	46,484,300	4	107½	1,859,372	$49,970,623
American Steel & Wire Co.:					
Preferred.....	40,000,000	117½	....	47,000,000	.....
Common.	50,000,000	.....	102½	.....	51,250,000

The United States Steel Corporation

Name of Company.	Amount of stock outstanding.	Number shares stock new company for every 100 shares old stock.		Amount of new stock required to make the exchange.	
		Pref.	Com.	Preferred.	Common.
National Tube Co.:					
Preferred.	$40,000,000	125	....	$50,000,000	.....
Common.....	40,000,000	8.8	125	3,520,000	$50,000,000
National Steel Co.:					
Preferred.....	27,000,000	125	....	33,750,000	.....
Common.....	32,000,000	.....	125	.....	40,000,000
American Tin Plate Co.:					
Preferred.....	18,325,000	125	....	22,906,250	.....
Common.....	28,000,000	20	125	5,600,000	35,000,000
American Steel Hoop Co.:					
Preferred.....	14,000,000	100	....	14,000,000	.....
Common.	19,000,000	.....	100	.....	19,000,000
American Sheet Steel Co.:					
Preferred.....	24,500,000	100	....	24,500,000	.....
Common.....	24,500,000	.....	100	.....	24,500,000
Amount new stock required to make exchange, totals..	.....	.....	....	261,722,612	269,720,623
Present issues of the seven companies, totals...	.....	.....	....	217,085,900	239,984,300
Increase in capitalization for seven companies	.....	.....	....	44,636,712	29,736,323 44,636,712
Total increase common and preferred stock, seven companies.....	.....	.....	.....	.....	74,373,035

Name of Company.	Amount of stock outstanding.	Number shares stock new company for every 100 shares old stock.		Amount of new stock required to make the exchange.	
		Pref.	Com.	Preferred.	Common.
Companies added after Organization.					
American Bridge Co.:					
Preferred.....	$31,373,800	110	....	$34,511,180	.....
Common.....	30,950,800	.....	105	.....	$32,498,340
Lake Superior Consolidated Iron Mines:					
Common.....	29,887,449	135	135	40,348,056	40,348,056
Amount new stock required.	.....	.....	.....	74,859,236	72,846,396
Present issue for two companies, total.....	.....	.....	.....	31,373,800	60,838,249
Increase in capitalization for two companies.	.....	.....	.....	43,485,436	12,008,147 43,485,436
Total increase, two companies.	.....	.....	.....	.....	55,493,853
Increase seven companies.....	.....	.....	.....	44,636,712	29,736,323
Increase, two companies.....	.....	.....	.....	43,485,436	12,008,147
Total increase, nine companies.	.....	.....	.....	88,122,148	41,744,470 88,122,148
Total increase, preferred and common	.....	.....	.....	.....	129,866,618

The United States Steel Corporation

In á circular letter issued by J. P. Morgan & Co., March 2, 1901, it was stated that the "bonds of the United States Steel Corporation are to be used only to acquire bonds and 60 per cent. of the stock of the Carnegie Company." It has been frequently stated on excellent authority, though not published by the company, that the bonds were exchanged at par, and that Mr. Carnegie received for each $1,000 of his Carnegie stock, bonds at $1,500. At those rates he would have received for

	Bonds of U. S. Steel Corporation.
$160,000,000 bonds	$160,000,000
$96,000,000 stock at 150 in bonds	144,000,000
	$304,000,000

As this sum agrees exactly with the amount of bonds issued, it seems a reasonable interpretation.

It is generally supposed with good reason that most of the remainder of the Carnegie stock was taken at 150 preferred stock, with an equal bonus of common, though some little was bought for $1,200 or $1,300 cash. Assuming all taken at the first rate, and that $25,000,000 cash was raised with $25,000,000 par of preferred, with equal bonus of common, a generally accepted and doubtless correct inference, the remainder of the Carnegie holdings and the cash would have cost as follows :

	New Stocks.	
	Preferred.	Common.
For $25,000,000 cash	$25,000,000	$25,000,000
For $64,000,000 Carnegie stock at 150 each	96,000,000	96,000,000
	$121,000,000	$121,000,000
Stocks of the nine companies	336,581,848	342,567,019
Total to pay for purchases	$457,581,848	$463,567,019

Taking these sums, which, as will be seen, are partly estimates, known to be not quite accurate, but probably too large, from $550,000,000 each of preferred and common, the total amount authorized, there is left for the pay of the syndicate and as treasury stock to be used in future:

Preferred	$92,418,152
Common	86,432,981

The main advantages of so large a corporation, as explained by the President, Mr. Charles M. Schwab, to the United States Industrial Commission, are found chiefly, perhaps, in the fact that it has so complete a control of the different varieties of ore and other raw materials that it remains in its business almost entirely independent of other organizations. It has also the opportunity, to a much greater degree than has a small organization, of turning its different plants to work upon the product that for the time being seems most profitable, though this power is limited by the nature of the plants. It has also the advantage of owning to a considerable extent its needed transportation facilities, both in its fleet on the lakes and in its rail-

ways. Of course, all of the other advantages of savings from organization, distribution of talent, concentration of production, and so on, are likewise obtained. With the exception of the first named advantages, and perhaps also of a somewhat monopolistic control of raw materials hinted at by Mr. Schwab, it has no advantage over its various constituent companies, excepting that which comes from the added power of the greater capital.

CHAPTER XIII

FEDERAL LEGISLATION

In Chapter XI. a summary has been made of the evils of Industrial Combinations as they affect investors, stockholders, consumers, wage earners, etc. In the same chapter the remedies for these evils, so far as they can be accomplished by state legislation or by changes in the patent laws, amendments to the interstate commerce law, the tariff, etc., have been, perhaps, sufficiently discussed. In that chapter it seemed inadvisable to discuss in detail the legal questions regarding the scope of federal legislation. The experience of the last two years, however, and more detailed study of this subject by legal experts, have made it possible now to express, without discussing legal technicalities, somewhat positive opinions regarding remedies for Trust evils which may be provided by the Federal Government aside from amendments to the

tariff, patent, and interstate commerce laws already discussed.

It seems to be established that there is no hope of the several States uniting within any reasonable time upon any form of corporation law which will prove efficient in preventing abuses arising from Industrial Combinations. The different States, in order to secure the location of these combinations within their borders, will rather bid one against the other for these corporations by offering liberal charters, low taxation, and other similar attractions. The only possibility, therefore, of uniform regulation seems to be through the Federal Government. The United States Industrial Commission in its final report presents two very complete legal arguments by Mr. F. J. Stimson, the counsel of the Commission, and Prof. E. W. Huffcut of Cornell University, which seem to show beyond much question that Congress, under the powers given it to regulate commerce between the States, may provide a sufficient control for these corporations.

This legislation might, if it seemed desirable, take the form of relinquishing to the several States control over interstate commerce, so that

any State might exclude corporations organized in another State from doing business within its borders, even though that business were of the nature of interstate commerce. This remedy, however, although it might be constitutional, would lead to interminable confusion in legislation as well as in business, and seems utterly impracticable.

It would probably also be possible for Congress to go far in the way of destroying monopoly by forbidding to monopolistic corporations use of the mails; or, on the other hand, there is a possibility that, if great corporations or combinations seemed really to menace the public welfare, the United States Government might undertake the socialistic plan of itself entering upon certain lines of business that seemed to have become so monopolistic as to endanger the public welfare. It would be expected, of course, that if such an extreme, and for the present, at least, doubtless unwise measure were to be undertaken, the Government would begin with the purchase of the telegraphs, then of the railroads, and so on, until it had gone as far as the people would permit. This so-called remedy of the Socialists may also be set aside without

discussion as, for this time at least, utterly impracticable. There remains the probably practicable measure of laying down conditions under which corporations may be permitted to engage in interstate commerce, and of forbidding any person or corporation to engage in such commerce until these conditions have been met.

The Judicial Committee of the House of Representatives two years ago recommended an amendment to the Constitution giving to Congress plenary power over industrial combinations. President Roosevelt, in the summer of 1902, also suggested this as a possible remedy if it proved that Congress had not sufficient power without it. In his last message, however, he expresses the opinion that Congress has sufficient power. Many of the best authorities agree with him. Under those circumstances it would clearly be unwise to wait for a constitutional amendment before taking action. Moreover, such an amendment would be almost revolutionary in its centralizing tendency and should not be made, if other means will suffice.

The present Sherman anti-trust law forbids monopolies or even agreements tending toward monopoly in interstate commerce. The Su-

preme Court has upheld the constitutionality of the act, and has decided that such combinations are illegal, even though they may be reasonable when considered from the business point of view. The questions that now remain, then, are not those purely of a legal character as to what Congress may do; but, assuming that Congress has the power to lay down conditions under which corporations may engage in interstate commerce, the question is rather what conditions should be imposed, what action is wisest. Among the numerous suggestions that have been made, three or four are of chief importance, and we should attempt to weigh carefully the relative merits of these.

1. Attorney-General Knox, on October 14, 1902, made a notable address at Pittsburg, in which he told what the Government had done under present laws in restraining Trusts, and indicated in general terms what more Congress might do in providing additional legislation. He seems to have amplified the views of President Roosevelt. Although his recommendations were not specific, his suggestions seem to mean this:

(*a*) Under the Sherman Act it has been de-

cided that combinations in restraint of interstate commerce, whether reasonable or unreasonable, are illegal and punishable. In his judgment—and in this judgment most thoughtful men since the decision in the Addyston Pipe case agree—it is wise to permit any partial or even complete restraints of trade that are in their nature reasonable, while punishing severely those that are unreasonable. The courts, as under the common law, should determine what is reasonable and what is unreasonable.

(*b*) His chief recommendation, however, looks toward extension of the scope of the Sherman Anti-Trust Act. Following a line of argument parallel with that used by Mr. F. J. Stimson and Prof. E. W. Huffcut, mentioned above, he expresses the opinion that Congress has the power to lay down the conditions under which corporations may engage in interstate commerce, and to prescribe penalties for the violation of such conditions. The constitutional power seems to be clear; but he does not state categorically what conditions he would impose. The implication in his address, however, from the evils enumerated and from the principles discussed, is that corporations doing an interstate business

ought to be required: (1) "To do business in every State and locality upon precisely the same terms and conditions. There should be no discriminations in prices, no preferences in service." (2) They should be subject to "visitorial supervision"; secrecy in the conduct or result of their operations should be prohibited by law.

These conditions might be enforced only by penalties imposed by the courts after a violation of the act had been proved in a specific case brought by an injured party or by a government attorney, as the Sherman Anti-Trust Act is enforced. This plan would be conservative; it would leave the burden of proof on the prosecutor, and probably would not be generally effective. It would, however, be certain in course of time to give us some extremely important decisions and indications for further action.

Congress might, however, following the plan of several States in dealing with insurance companies, partly shift the burden by providing that before any corporation engaged in interstate traffic it should procure a permit or license from some authority duly established in the act (a bureau of the new Department of Commerce,

an officer of the Treasury, or otherwise). It would then regularly furnish such information regarding its business as the law demanded; it could be regularly inspected to enforce compliance with the conditions laid down; and any corporation engaging in interstate commerce without such license would be at once subject to penalty. The conditions could be made whatever Congress deemed wise.

The important conditions named by the Attorney-General which might be enforced by either of the methods mentioned merit consideration from the economic as well as from the legal point of view.

The publicity implied in the words "visitorial supervision" is a remedy which has been long and ably advocated, and beyond question, if it could be properly enforced, would be very serviceable. The extent and nature of the publicity which is perhaps desirable may be found indicated in Appendix D. The corporations, however, which most abuse their power would make every effort to evade such supervision, and, as appears later, in many cases such evasion would be easy.

Discrimination in prices between different

customers for the purpose of crushing rivals and strengthening monopoly, as Professor Clark of Columbia University has ably shown, is of three kinds: First, the great corporation sells at ruinously low rates in localities where rivals are at work, while recouping itself for the loss by demanding high prices elsewhere; second, with many kinds of products at its disposition, while its smaller rival has only one or two classes, it may, to destroy the rival, make ruinously low, though everywhere uniform prices for these specific classes, while keeping high prices on its other products; in the third place, it may grant especially favorable terms to those purchasers who buy only its goods. It is perhaps too much to say that it is impossible to stop these practices, but any one who knows business will realize that it is extremely difficult to stop any of them, especially the second.

Moreover, it is not absolutely clear that they should be stopped; such discriminations at times may be beneficial to society. A rival of a great combination often makes its way by giving special rates on certain articles used as leaders and by discriminations among customers. The principle of discrimination in freight rates

on railroads, it is generally conceded, is evil; but railroads are natural monopolies. It is useless to talk of encouraging competition among them. On the other hand, the so-called Trusts are in industries which are normally competitive, and people wish to keep them so. If, then, rivals in competitive trade against the great corporations get their start by special rates to individual customers and by making leaders of special articles—to compel them to sell to all customers at the same rate is against free competition, as the word is ordinarily used. Will the limitation of free action harm most the Trust or its rival?

A small flouring mill in southern New York sells flour, let us say, in its own town, in Owego and Elmira, N. Y., in Wilkesbarre and Scranton, Pa., and in Phillipsburg and Dover, N. J. It is engaged in interstate commerce. It must sell in face of the competition of the great Minneapolis mills and of the so-called Flour Trust. Freight rates from Minneapolis are substantially the same to all these points; in them all flour of the same brand sells at practically the same price. The local New York miller must meet these prices, freights included. In

consequence, as his freights differ, he sells to each town at a different rate. His profits from each differ. He does not sell to all at the same rate and then add the freight, as does his great rival. If the law of no discrimination is enforced on him in the same way as on the Trust —and the law cannot be a respecter of persons —he is confined to his local New York market, cannot sell enough to keep his mill running, and stops. The act indicated, rigidly enforced, would close hundreds of small mills in all sections of the country, and would stop thousands of men in other lines. Yet possibly this may be a less evil than the discriminations of the Trusts

We must, however, not blink the fact that in many individual cases such a law may strengthen instead of weaken the combination. It would be a practical impossibility for any executive body to grant exceptions in special cases. The shippers are altogether too numerous.

It is also true that a law forbidding discriminations, as well as one requiring publicity, can be easily evaded. It is impossible in many cases to get evidence. But direct methods of evasion, like that indicated below, are also even now employed.

It is proposed to make these laws apply only to interstate commerce. A manufacturing corporation as such, however large, is not engaged in interstate commerce. It is at times even now the custom for a great manufacturing corporation, in order to evade a state law against combinations, to sell its goods in the first place to a subordinate corporation or to a co-working individual, who then transfers them to real purchasers. This second corporation might, of course, be so organized as to be perfectly ready and willing to meet any conditions, that of publicity or non-discrimination or otherwise, without in any way opening the gate for inspection or knowledge of the workings of the really monopolistic manufacturing corporation. It would even be possible, if desirable, for a separate corporation to be formed for the selling work of each several State, as has often been suggested. Of course it is possible that the courts might hold in an individual case that this method had been adopted simply for the purpose of evading the law, and that for the purpose of that case the transactions should be considered one. It is scarcely probable, however, that this would be held, unless in very rare instances,

where the evidence was absolutely clear; and if the separate corporations were organized and managed with entirely separate accounts, as could readily be done, it does not at present appear how the United States courts would obtain by compulsion the jurisdiction necessary for the effective carrying out of the law. The law would be still more difficult of enforcement if the intermediate selling agent were a natural person and not a corporation. Similar difficulties would apparently be encountered in the enforcement of the laws suggested in a bill introduced by Senator Cullom, which bars the transportation of Trust-made products from one State to another.

2. This brings us to the discussion of the second remedy—one suggested and recommended by the United States Industrial Commission in its final report. The plan is to impose a tax upon corporations or individuals engaged in interstate commerce, and thereby to secure a supervisory control of such business and the opportunity of possible direct regulation. While there would doubtless be difficulty in imposing a direct tax, it seems to be the general opinion among the most competent authorities

that a franchise tax, or, to use another expression, a license tax, as a condition preliminary to engaging in interstate commerce, would be clearly constitutional. The act of imposing a tax shows most strikingly the power of a government; and the courts have been inclined, when a tax is in itself constitutional, to give to the Executive all the power needed to enforce the tax. Were a franchise or license tax imposed annually in proportion to, let us say, the net receipts from interstate business, the investigation of the business of each corporation would be of necessity so thorough that the government would readily obtain all the knowledge necessary for holding the corporations rigidly to legal action and for prescribing what seemed to be wise measures for future control.

In order to obtain these results, the tax need not be heavy enough to be at all burdensome, although it would be of such a nature that it might readily be made to yield a large income in case of need or even to impose positive limitations in any direction desired if that should become necessary. The tax might probably even be devised so as directly to check stock watering. The most important factor, how-

ever, would be that when the machinery for the imposition and collection of the tax was once thoroughly in order, the Government would have in readiness a power which could easily be adapted to the needs of the case. It would naturally be enforced by a bureau as indicated above in connection with the plan of the Attorney-General.

Were the tax made compulsory and burdensome, efforts to evade it and the difficulty of finding interstate commerce would be of the nature of those indicated in the first plan; but here again, as in the preceding case, the decisions of the courts would ultimately, doubtless, be of great assistance; and if the corporations were compelled to secure first their permit, evasion of the law would be more difficult.

Such a tax would fit well into our general scheme of taxation, and would be a useful balance wheel in our entire revenue system. The line of court decisions certain to be made within a comparatively short time would aid Congress in future legislation. If need be, eventually the tax itself might be a means of control.

3. A third plan, likewise indicated by the Industrial Commission, but most extensively

and emphatically advocated, perhaps, by Mr. James B. Dill of New York, is the federal incorporation of corporations engaged in interstate commerce. This plan is in line with both plans preceding, but is one step further. Should Congress make a voluntary corporation law too burdensome or rigid, the manufacturing corporations would not organize under it. If it were made compulsory, they would employ every device to avoid doing interstate business, and comparatively little would be accomplished. Should Congress, on the other hand, make a law of such a nature that it would be advantageous for corporations to organize under it, the result might be quite different.

The chief objections that have been made to the plan are:

(*a*) That it would bring about a high degree of centralization in all of our important business, and that it would, by the transference of much business from the State courts, grievously overburden our federal judiciary; and

(*b*) That were Congress to propose the enactment of such a law, the influence of the corporations would be such that the law, when made, instead of being restrictive, would probably be

even more liberal than our present State laws. The corporations, then, instead of being under better control, would be practically placed beyond control.

If in such a Federal Corporation Act, following the precedent of the National Banking Act, provision were made, if necessary, that suits might be brought in either Federal or State courts, there need be, and probably there would be, no great increase in the activity or power of our Federal courts.

If Congress were to follow the precedents already established with reference to corporations in Puerto Rico, and in the case of the national banks, its corporation law would probably not be extremely liberal. It would be made, of necessity, under the pressure of an awakened public opinion, and attempts to give too great privileges would probably be checked.

Such a law, if passed, should provide for a high degree of publicity as regards the organization and management of corporations, should impose rigid provisions regarding capitalization and management, and might readily, if it seemed wise, forbid discriminations in prices or make any other conditions that seemed reasonable.

Federal Legislation

Compulsory severe legislation is always hard to enforce. In the present difficult case, it would be extremely desirable so to legislate as to put on the side of the law the great corporations which are trying to do a fair, honorable business, which is in the public interest, while stopping the evils of the others. An attractive measure would be to combine with the rigid restrictions above mentioned, which would destroy many, if not most, of the evils, a provision that federal corporations should be exempt from State taxation except as to property actually situated within the several States. Now the large corporations fear and oppose and evade State corporation taxes. The variations and complications arising from different systems are troublesome; in many cases, lawyers say, probably with some exaggeration, corporations are subject to "strike" bills and to blackmail where discretion is left with minor officials. They would be willing to pay a Federal tax even heavier than their present taxes, if it were alike on all and fairly and honestly levied. Such an exemption provision—and possibly others, which might check too hostile legislation by separate States, for unless Congress forbade it, they might attempt injuri-

ous regulation—might easily prove so attractive that the sound corporations would readily organize under the law and aid in its just enforcement.

A Federal corporation law, if enacted, should certainly at first be made permissive rather than mandatory. There would thus be no danger of a revolution in business; the courts and the industrial community would adapt themselves gradually to the new line of organization. If the law were reasonable, even though very strict, the best corporations would come under it at once. The others would soon feel the pressure of public disapproval, if the Federal law were distinctly the best. If experience showed that it were necessary to extend the scope of the act, though that is not probable, it would be comparatively easy later on to force, by taxation or otherwise, other State corporations engaged in interstate traffic to incorporate under it.

The three plans indicated are not contradictory; they are rather progressive along the same line. Either act could be passed alone, or all of them might be passed together. From present indications, it seems that the people are rather inclined toward somewhat rigid, although

not destructive, measures. If the first law discussed were enacted, it would doubtless give us valuable experience and decisions, and would be, with the exception of one point, a distinct step in advance, possibly all that should be taken at first. But so far as has appeared, it is practically entirely compulsory in its nature and could be readily evaded. The other two measures seem more drastic, and doubtless would be more rigid in many ways; but, on the other hand, the last at any rate might contain provisions which would remove the hostility of the better class of corporations. These would then themselves readily aid in the enforcement of the law; while if it were made optional, even if combined with the other plans, there certainly could be no charge of action hostile to the interests of capital legitimately invested and properly employed for the welfare of the public.

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